(20,274.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 45.

THOMAS POLK, WILLIAM I. MOODY, JAMES L. LONG, ET AL.

vs.

MUTUAL RESERVE FUND LIFE ASSOCIATION OF NEW YORK AND MUTUAL RESERVE LIFE INSURANCE COMPANY.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

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United States Circuit Court of Appeals, Second Circuit.

THOMAS POLK, WILLIAM I. MOODY, JAMES L. LONG, SIMEON MARSH, MAX BOSHWITZ, THEODORE L. HASTINGS, WILLIAM H. FOOTE, DAVID L. SNODGRASS, EDWARD C. POOL, THOMAS H. DEUPREE, FRANK B. HAMILTON, THOMAS M. GATES, and JAMES M. HOWARD, Appellants,

against

MUTUAL RESERVE FUND LIFE ASSOCIATION OF NEW YORK and MUTUAL RESERVE LIFE INSURANCE COMPANY, Appellees.

The above named appellants filed their bill in equity in the United States Circuit Court for the Southern District of New York, praying for the appointment of a receiver of both defendants, the winding up of both defendants, an accounting to ascertain the interests of complainants and all other policy holders of Mutual Reserve Fund Life Association in the assets of Mutual Reserve Life Insurance Company and the marshalling and distribution of said assets. A final decree was entered by the Circuit Court sustaining a demurrer of the defendant to the amended bill of complaint and dismissing the bill. From that decree the complainants have appealed to this Court.

Statement.

The amended bill of complaint alleges the existence of the following facts:—

The complainants became members and policy holders of the said Association respectively on various dates from 1886 to 1900. The policy of each complainant is made a part of the bill and also the application for insurance of two of the complainants. The material provisions of the policies and applications are hereto annexed as Exhibits 1 and 2. Said Association became a corporation organized and existing under the laws of the State of New York. It was originally organized in 1881 under the corporate name of Mutual Reserve Fund Life Association of New York, under Chapter 267 Laws of 1875, entitled "An Act for the incorporation of societies and clubs for certain lawful purposes." The original certificate of incorporation stated the objects and business of the company to be "The mutual benefit of ourselves and all others who may become members of the society by providing benefits for families and others dependent upon such members by means of voluntary contributions to meet exigencies occurring from time to time, and to provide a fund for the common and exclusive benefit of all members." In 1883 the association reincorporated under Chapter 175 Laws of 1883, entitled, "An Act to provide for the incorporation and regulation of cooperative or assessment life and casualty insurance associations and societies." Its amended charter or certificate of incorporation filed in 1883, after reciting the desire of the corporation to reincorporate under said act of 1883 provided,

"First. We do hereby express our intention to form an organization for the transaction of life insurance upon the coöperative or assessment plan.

* * * * * * *

Fourth. The mode and manner in which the corporate powers granted are to be exercised are by issuing certificate of membership policy or other evidence of interest to, and promise and agreement with its members, whereby upon the decease of member, money or other benefit, charity, relief, or aid is to be paid, provided or rendered by said corporation or association to the legal representative of such member, or to the beneficiary designated by such member, which money, benefit, charity, relief or aid are derived from voluntary donations, or from admission fees, dues and assessments, or some of them, collected or to be collected from the members thereof, or members of a class therein and interest and accretions thereon, or rebates from amounts payable to beneficiaries, or heirs, and wherein the paying, providing or rendering of such money or other benefit, charity, relief or aid is conditioned upon the same being realized in the manner aforesaid; and wherein the money or other benefit, charity, relief or aid so realized is applied to the uses and purposes of said corporation or association, and the expenses, of the management and prosecution of its said business."

The existence and corporate powers of the Association under the name of Mutual Reserve Fund Life Association of New York continued from that time unchanged until April 17th, 1902. On that date a Declaration and Amended Charter of the said Association was filed under and pursuant to the provisions of Chapter 722 Laws of 1901, which act was an amendment of Section 52 of Chapter 690 Laws of 1892, known as the Insurance Law of the State of New York. This Amended Charter of 1902 was adopted and filed pursuant to a resolution of the Board of Directors of the said Association adopted by more than a majority of said Board. The Declaration and Amended Charter was duly certified by the Attorney General of the State to be in accordance with the requirements of law, and the State Superintendent of Insurance issued his certificate of the filing of such Declaration and Amended Charter and consented to the transaction of the business of insurance by the said Mutual Reserve Fund Life Insurance Company as in said Amended Charter provided. The material provisions of said Declaration and Amended Charter are as follows:

"This is to certify that the Mutual Reserve Fund Life Association, " a corporation originally organized under and by virtue of Chapter " 267 of the Laws of 1875, and reincorporated and transacting busi- " ness under Chapter 175 of the laws of 1883 of the State of New " York, and the laws amendatory thereof and supplementary thereto, " has duly accepted the provisions of the Act of the Legislature of the " State of New York, being Chapter 690 of the Laws of 1892, known " as 'The Insurance Law,' and the amendments thereto, and in con- " formity with the same has duly adopted the following Amended " Charter:

Article I.

" The name of the corporation shall be 'Mutual Reserve Life In- " surance Company.

* * * * * * *

Article III.

"The business of the company shall be insurance upon the lives "or the health of persons, and all and every insurance appertaining "thereto, the making of endowments, and the granting, purchasing "and dispensing of annuities, such kind of insurance being au- "thorized under subdivision one of section 70 of 'The Insurance "Law.'

Article IV.

* * * * * * *

"SEC. 4. The present by-laws of the corporation, which form part "of its contracts with its members, shall continue to be the by laws "of the company unless or until the same shall be revised or "amended in the manner therein provided.

* * * * * * *

Article VI.

"SEC. 1. The company shall have no capital stock but shall be a "mutual company.

* * * * * * *

Article VIII.

"The company shall be entitled to have and enjoy all the rights, "privileges, and provisions of existing laws which might be included "in the charter and enjoyed by it, if it were originally incorporated "under 'The Insurance Law' of this State."

The consent of the policy holders to this amendment of the defendant's charter was not obtained and no meeting of policy holders was called for that purpose. The complainants had no notice of said amendment until June 2nd, 1902, on which date complainants received the following notice:

"Note Change of Name.

"Makes checks and money orders payable to

"Mutual Reserve Life Insurance Company.

"On April 17, 1902, Mutual Reserve Fund Life Association rein- "corporated as a mutual level premium Company under the title of "*Mutual Reserve Life Insurance Company.* Attention is called to this "change of name and to the accompanying report of the recent ex- "amination of the corporation by the Superintendent of Insurance "of the State of New York, which shows a surplus over liabilities of "$466,885.48.

"This reincorporation, while insuring the stability of the Com- "pany, makes no change in your policy.

"CHARLES W. CAMP, *Secretary,*"

The bill suggests no irregularity or defect in the procedure by which the amendment of the charter in 1902 was effected, other than that the consent of the policy holders was not obtained.

It is further alleged that said Company was organized about the 17th of April, 1902, by the then officers and directors of the respondent Mutual Reserve Fund Life Association, without authority from and without the knowledge or consent of complainants or the other

members and policy-holders of said Association and without corporate action by said members and policy-holders, and that complainants and the other members of the association were not advised of the organization of the Company until on or about June 2, 1902, when they received a printed slip notifying them that the said Association had reincorporated under the name "Mutual Reserve Life Insurance Company."

The amended bill then alleges that at the time of the organization of said Company the Association was, and for a considerable time had been insolvent its liabilities being in excess of the value of its assets by a large amount, and that the insolvency of the Association was known to the officers and directors thereof, and that the officers and directors, headed by Frederick A. Burnham, President of the Association, well knowing the insolvency of the Association, devised the scheme for the incorporation of the respondent Mutual Reserve Life Insurance Company and procured legislation intended to authorize the same, with the object and for the purpose of secretly and fraudulently "depriving complainants and the other members and policy-holders of respondent Association of their membership rights and privileges and of abridging the same, and that by their said course in the premises said officers and directors sought and intended to defraud the complainants and the members and policy-holders of said Association generally and sought and intended to deprive them of their rights as members and policy-holders or to cause a forfeiture of the same."

The amended bill further alleges that in connection with the sending out of the notice of the change of name, respondent Company sent out what purported to be a premium call, No. 122, a copy of which is herewith exhibited and marked "Exhibit No. 3." It is alleged in the bill that said premium call was an entire departure from the contract obligations to members of said Association to whom it was sent.

It is further alleged in the amended bill that the respondent Association and the respondent Company have been for several years and are unable to meet and pay their obligations to their members or the beneficiaries of membership contracts, and have only been able to preserve the appearance of solvency and to continue the transaction of business by scaling down the claims of beneficiaries, and a list of claims so scaled down during the year 1901 is exhibited with the bill, showing the total, of claims represented by certificates amounting to $960,232.35 was scaled down to an aggregate amount paid of $574,436.05. This scaling down is alleged to have been the result of misrepresentations and fraudulent practice upon the part of the Association, its officers and directors.

Complainants in their amended bill allege "that said law, chapter 722 of the Laws of New York of 1901, if its effect and meaning be such as to authorize the pretended reorganization and reincorporation of the respondent Association by the officers and directors thereof without due notice to and without the knowledge and consent of complainants or any of the members and policy-holders of respondent Association * * * is in contravention and violation of Section 10 Article I of the Constitution of the United States which pro-

hibits any State from enacting a law "impairing the obligation of contracts,' and complainants invoke and rely upon said provision of the Constitution of the United States and say that under said provision of the Constitution of the United States, said law is unconstitutional, invalid and void." And "complainants further allege that said law of the State of New York, if given the construction, meaning and effect aforesaid, is in contravention and violation of those provisions of the Constitution of the United States and of the State of New York which provide that "no person shall be deprived of his property without due process of law, in this, that they deprive the complainants and the other members and policy-holders of respondent Association of their vested rights and privileges and of their property rights under their contracts and agreements with respondent Association without due process of law, and complainants, as citizens and residents of the State of Tennessee and non-residents of the State of New York, invoke the provisions of Article XIV of the Amendments to the Constitution of the United States, and, upon advice of counsel, allege and charge that said law of the State of New York, if given the force meaning and effect aforesaid, is in violation of those clauses of the XIVth amendment to the Constitution of the United States which provide that 'no state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

The amended bill contains no other allegations than the foregoing which are material to the present questions, and is transmitted herewith for the possible convenience of the Court.

And the Circuit Court of Appeals for the Second Circuit further certifies that the following questions of law are among others presented by the assignments of error in this case, that their decision is necessary to a decision of this case, and that to the end that this Court may properly decide the other questions of law presented it desires the instruction of the Supreme Court of the United States upon the following:

Questions.

1. Does the amended bill of complaint disclose that any contract obligations between complainants and the de*de*fendant Mutual Reserve Fund Life Association were impaired by the incorporation of the Mutual Reserve Life Insurance Company in 1902 pursuant to the provisions of Chapter 722, Laws of 1901 of the State of New York, and the transfer to said Company of the assets, properties and membership of the Mutual Reserve Fund Life Association?

2. Does the amended bill of complaint disclose and show that Chapter 722, Laws of 1901 of the State of New York was in violation of Article I, Section 10 of the Constitution of the United States, as impairing the obligations of a contract between the defendant Mutual Reserve Fund Life Association and complainants in so far as it authorized the reincorporation of said Association as the Mutual Reserve Life Insurance Company?

3. Does the amended bill of complaint disclose that Chapter 722, Laws of 1901 of the State of New York, is in violation of the pro-

visions of Article XIV of the Amendments to the Constitution of the United States in this, that the reincorporation of the Mutual Reserve Fund Life Association as the Mutual Reserve Life Insurance Company and the changes in the charter powers and franchises of the corporation have the effect of depriving complainants of their property without due process of law and of their vested contract rights and privileges and of their property rights under their contracts and agreements with respondent Association?

4. Does the amended bill of complaint disclose that Chapter 722, Laws of 1901 of the State of New York, was in violation of those provisions of Article XIV of the Amendments to the Constitution of the United States which provide that no State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law nor deny to any person within its jurisdiction the equal protection of the laws?

Dated, May 28, 1906.

WM. J. WALLACE,
E. HENRY LACOMBE,
W. E. TOWNSEND,
Circuit Judges.

EXHIBIT 1.

"Mutual Reserve Fund Life Association, New York, U. S. A.

Number 78091. Annual Dues $15.00.

"In consideration of the application for this certificate of membership or policy of insurance, which is hereby referred to and made a part of this contract, and of each of the statements made therein * * * the Mutual Reserve Fund Life Association does hereby receive James N. Howard of Memphis, County of Shelby, State of Tennessee, as a member of said Association; and upon the consideration aforesaid, and upon the further consideration, and upon the condition of the payment of the dues for expenses to be paid on or before the twenty-seventh day of October in every year during the continuance of this certificate or policy of insurance, and also upon the further condition of the payment of all mortuary premiums payable at the Home Office of the Association in the City of New York within thirty days from the first week day of the months of February, April, June, August, October and December of each and every year during the continuance of this certificate or policy of insurance and subject to all the provisions, requirements and benefits stated on the second page of this certificate or policy of insurance, which are hereby referred to and made a part of this contract, there shall be payable to the legal representatives of said member the sum of Five Thousand Dollars within ninety days after acceptance of satisfactory evidence to the Association of the death of said member.

* * * * * * *

Provisions, Requirements and Benefits.

"I. Within thirty days from the first week day of the months of February, April, June, August, October and December of each and every year during the continuance of this Certificate, or Policy

of Insurance, there shall be payable to the Association a Mortuary Premium, for such an amount as the Executive Committee of the Association may deem requisite, which amount shall be at such rates, according to the age of each member, as may be established by the Board of Directors, and the net amount received, as provided in the Constitution or By-Laws of said Association, less twenty-five per cent. to be set apart for the Reserve or Emergency Fund, as hereinafter provided, shall go into the Death Fund to meet the current mortality of the Association.

"II. Twenty-five per cent. of the net receipts from mortuary premiums paid under this Certificate, or Policy of Insurance, during a period of fifteen years from its date, shall be added to the Reserve or Emergency Fund, which shall be held as provided in the Constitution or By-Laws of the Association; deposited with a Trust Company, or Companies; deposited with departments constituted by governmental or legal authority; and upon the order of the Board of Directors of the Association shall be securely invested in United States Bonds, Mortgages, or other interest bearing securities, for the exclusive benefit of the members of the Association, and the interest on the same, as it accrues, shall be placed to the credit of the Death Fund, to be used in providing for the current death claims. The Reserve or Emergency Fund above $100,000. may be applied to the payment of claims in excess of the Actuaries' Tables of Mortality, and when any claim by death is due, after a Mortuary Premium Call upon each member of the Association has been made, according to the Rules of the Association, to making up any deficiency that may then exist in the Death Fund. No claim is payable by the Association except from the Death Fund of the Association at the time of said death, or from any moneys that shall be realized to the said fund from the next Mortuary Premium Call made, or from the Reserve or Emergency Fund as herein provided.

"III. The Annual Mortuary Premiums on this Certificate, or Policy of Insurance, after the same has been in force fifteen years from its date, shall not include any further contributions to the Reserve or Emergency Fund, nor shall the net amount of such Annual Mortuary Premiums thereafter exceed the annual premiums required by the Actuaries' tables of mortality, or the actual mortality experience of the Association.

"And after the expiration of said fifteen years there shall be credited to this Certificate, or Policy of Insurance, if then in force, the equitable proportion of the then total surplus Reserve or Emergency Fund accumulations, in which this Certificate or policy is then entitled to participate, including participation in the contribution to such surplus Reserve or Emergency Fund under this Certificate or Policy, and also in the then equitable share of such Reserve or Emergency Fund accumulations contributed thereto by members (otherwise participating), whose policies have terminated by death, expiry or lapse, which said proportion or sum shall be then ascertained and determined by the Actuary of said Association, and the amount so ascertained and determined *by the Actuary of said Association, and the amount so ascertained and determined* shall be available to the members insured under this Certificate or Policy, in manner following, that is to say:

"*First.* At the option of said member, provided he shall notify said Association in writing at least one year before the expiration of said fifteen years, that he desires to have said sum paid as a tontine accumulation, then, and in that event, this Certificate or Policy shall thereupon, on the completion of said term of fifteen years, be payable only as a Cash Tontine Accumulation, so ascertained and determined as aforesaid, and shall be paid in cash to said member upon the surrender hereof to said Association.

"*Second.* If said member shall not exercise said option, and such surplus accumulations shall not be applied as aforesaid, then the same, after the expiration of said period of fifteen years, shall be available as cash towards payment of future dues and Mortuary premiums under this certificate or policy.

"IV. This contract is not binding until the written application therefor shall have been received, accepted, and this Certificate, or Policy of Insurance, issued by the Association, and delivered to said member, in person, during his life, while in good health, nor until the admission fee is paid thereon. * * *

* * * * * * *

"X. This contract shall be governed by, subject to, and construed only according to the Laws of the State of New York, the place of this Contract being expressly agreed to be the Home Office of said Association in the City of New York; and said Association shall not be held liable, and no action at law or suit in equity shall be brought or maintained hereon or recovery had, unless such action or suit is commenced within one year from the date of the death of said member; and if any action or suit is brought after that time the lapse of time shall be a conclusive bar thereto.

"XI. No personal liability of the member is incurred by becoming a member of this Association, and the continuance of this Certificate, or Policy of Insurance, and payments by the member are voluntary, at the option of the member, to continue only so long as the member may desire to keep this Certificate, or Policy of Insurance, in force, but a failure to make the payments as herein stipulated will terminate this contract. This Contract, on the part of the Association, is a bi-monthly term Contract, renewable at the option of the member, before expiration, upon payment of the dues and mortuary premiums at the times and in the manner in this Contract provided."

EXHIBIT 2.

"PART I. *Application for Membership and Policy of Insurance*

In the

Mutual Reserve Fund Life Association

"Of the City of New York.

Incorporated.

"*Application for Free Policy—No Restriction as to Travel, Occupation or Residence.*

"Conditions upon which this application is made are that no personal liability of the applicant shall be incurred by becoming a

member of this Association. Payments by the member are voluntary at the option of the member to continue only so long as the member may desire to keep the said certificate or policy in force.

"I, William Henry Foote residing at *near* Whiteville (Note.—Insert the name in full. Use ink.) County of Fayette and State of Tenn. do hereby make application to the Mutual Reserve Life Association for Membership and a Policy of Insurance upon my life, and as a consideration therefor I warrant the statements and answers as written in said application to be full, complete and true."

(Here follow the usual personal questions and answers as to the applicant's "life history.")

"It is hereby agreed that the answers and statements in this application (Parts 1 and 2) whether written by the applicant or not, are warranted to be full, complete and true, and that this agreement and the Constitution or By-Laws of the Association, with the amendments thereto, together with this application, are hereby made part of any Policy that may be issued hereon. That if any of the answers or statements made are not full, complete and true, or if any condition or agreement shall not be fulfilled as required herein or by such Policy, then the Policy issued hereon shall be null and void, and all money paid thereon shall be forfeited to said Association. That the person soliciting or taking this Application, and also the Medical Examiner, shall be agents of the applicant as to all statements and answers in this Application, and no statements or answers made or received by any person, or to the Association, shall be binding on the Association, unless such statements or answers be reduced to writing and contained in this Application. And the applicant hereby expressly waives all provisions of law now existing or that may hereafter exist, preventing any physician from disclosing any information acquired in a professional capacity or otherwise, or rendering him incompetent as a witness in any way whatever, and for himself and for any person accepting or acquiring any interest in such Policy, authorizes and requests any such physician to testify concerning the health and physical condition of the applicant. That under no circumstances shall the insurance hereby applied for be in force until payment in cash of the First Payment, including medical fees, while the applicant is in good health, and delivery of the Policy to the Applicant in person, during his lifetime and while in good health. The applicant further agrees not to use alcoholic or malt liquors to excess, or habitually use opium, hydrate of chloral, or other narcotics (tobacco excepted). The applicant also agrees that the affidavit or deposition of the Secretary or other officer of the Association, that notice of a Mortuary Premium or Dues, or other notice whatsoever, had been addressed and mailed to the applicant or other person designated by him, at the last post-office address appearing upon the books of the Association according to the usual course of business of said Association, shall be admitted as evidence, and deemed and constitute conclusive proof of due notice to every person acquiring any interest under said Policy.

(Signature of applicant in full:) W. H. FOOTE.

(Full name of beneficiary:) M. A. FOOTE.

The applicant may sign for the beneficiary.

* * * * * * *

EXHIBIT 3.

Ten Years Distribution Deposit Plan.

Premium Call 122.

Mutual Reserve Life Insurance Company.

Frederick A. Burnham, President

Mutual Reserve Building, 305, 307, 309 Broadway, New York.

NEW YORK, *June* 2, 1902.

You are notified that a Premium Call for $—— on account of Mortuary Premiums and Dues is hereby made upon you pursuant to the order of the Board of Directors and Executive Committee of the Company, and in accordance with the terms of your contract under above Policy Number with this Company, which sum is due June 2, 1902, and must be paid within 30 days thereafter. The above payment must be made on or before the Second (2) day of July 2, 1902 at the Home Office of the Company in the City of New York, or to its duly authorized Local Collector or Treasurer, whose name is stamped upon this notice, and who is furnished with a receipt signed by the Treasurer of the Company. If the same is not paid within the time stated, the Policy and all payments thereon will become forfeited and void, and your membership with the Company will expire with all rights thereunder.

The cause and purpose of this Premium Call is (1) to meet the payment of death claims and expenses as provided in Article VIII, Sec. 1, of the Constitution or By-Laws of the Company; (2) for Dues; (3) for the Reserve or Emergency Fund.

The sending of this notice or acceptance of the above premium shall not be held to waive any forfeiture caused by non-payment of any previous sum when due under said policy.

Remittances must be by valid Draft, Check, Post Office or Express Money Order, and when made by mail are at the sender's risk. Make remittances payable to the order of the Mutual Reserve Life Insurance Company. Cash sent by mail or payments made to any person whose name is not officially stamped on this notice, being unauthorized, will be at the risk of the insured. Agents or Local Treasurers are not authorized to make, alter or discharge contracts, grant credits or waive forfeitures.

CHARLES W. CAMP. *Secretary.*

Amended Bill of Complaint. 1

In the United States Circuit Court

FOR THE SOUTHERN DISTRICT OF NEW YORK.

THOMAS POLK, WILLIAM I. MOODY, JAMES L. LONG, SIMEON MARSH, MAX BOSHWITZ, THEODORE J. HASTINGS, WILLIAM H. FOOTE, DAVID L. SNODGRASS, EDWARD C. POOL, THOMAS J. DEUPREE, FRANK B. HAMILTON, THOMAS M. GATES, and JAMES M. HOWARD, 2

Complainants,

vs.

MUTUAL RESERVE FUND LIFE ASSOCIATION OF NEW YORK and MUTUAL RESERVE LIFE INSURANCE COMPANY, both domestic corporations of the State of New York,

Respondents. 3

In Equity.
No. 8155.

TO THE HONORABLE THE JUDGES OF THE UNITED STATES CIRCUIT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK:

Thomas Polk, James N. Howard, William I. Moody, James L. Long, Simeon Marsh, Max Boshwitz, Theodore J. Hastings, William H. Foote, David L. Snodgrass, Edward C. Pool, Thomas J. Deupree, Frank B. Hamilton and Thomas M. Gates, citizens and residents of the State of Tennessee, bring this their amended bill of complaint against Mutual Reserve Fund Life Association of New

4 York, a corporation organized and existing under the laws of the State of New York, and having its corporate situs in said State, and being domiciled in and an inhabitant of the Southern District of said State, and against Mutual Reserve Life Insurance Company, a corporation organized and existing under the laws of the State of New York and having its corporate situs in said State and being domiciled in and an inhabitant of the Southern District of said State. And thereupon complainants complain of said respondents and say:

I.

5 That complainants and each of them are citizens and residents of the State of Tennessee, and are members of and policy holders in the respondent Mutual Reserve Fund Life Association of New York.

Complainants by their several applications and payments under and pursuant to the laws of New York, and the Certificate and Amended Certificate of Incorporation and By-Laws of respondent Association were accepted as members and policyholders in respondent Association with all the rights, privileges, interests, duties and obligations of such, upon the following dates set opposite their names, re-

6 spectively, to wit:

Thomas Polk,	June 5, 1891.
James N. Howard.	Oct. 27, 1888.
William I. Moody,	July 2, 1891.
James L. Long,	Feb. 16, 1891.
Simeon Marsh,	Dec. 31, 1895.
Max Boshwitz,	Feb. 2, 1893.
Theodore J. Hastings,	April 14, 1900.
William H. Foote,	Oct. 8, 1894.
David L. Snodgrass,	Jan. 13, 1892.
Edward C. Pool,	April 22, 1890.
Thomas J. Deupree,	Jan. 17, 1895.
Frank B. Hamilton,	May 22, 1888.
Thomas M. Gates,	Sept. 7, 1886.

And said complainants, by reason of their said membership in respondent Association became and are mutually and reciprocally interested in respondent Association as members thereof upon the same basis, terms and conditions as all the other members and policy-holders of said Association. Said complainants have heretofore met and complied with all the rules, regulations and requirements of respondent Association and with the laws of New York in the matter of payments to respondent Association, both as members and policyholders, and are as members of respondent Association in good and regular standing with all the rights, privileges and duties of members at the date of the filing of this amended bill of complaint and at the date of the filing of their original bill of complaint heretofore filed in this cause on July 2nd, 1902. 7 8

Complainants and each of them plead and rely upon their rights as members of respondent Association under the laws of New York and the Charter and By-Laws of said respondent, but they further say that they are and each of them is a policyholder in, as well as a member of, said Association, and that under and by the terms and provisions of their several policies they have been since said policies were severally issued and now are interested in said Association to the same extent and upon the same basis as all other members and policyholders, and that there are no members having any other, different or greater rights than these complainants and each of them. As evidence of their status as policyholders, the complainants and each of them herewith exhibit their several policies in said respondent Association, make the same a part of this bill of complaint by reference and mark the same: 9

Exhibit A—Policy of complainant Thomas Polk.
Exhibit B—Policy of complainant James N. Howard.

Exhibit C—Policy of complainant William I. Moody.
Exhibit D—Policy of complainant James L. Long.
Exhibit E—Policy of complainant Simeon Marsh.
Exhibit F—Policy of complainant Max Boshwitz.
Exhibit G—Policy of complainant Theodore J. Hastings.
Exhibit H—Policy of complainant William H. Foote.
Exhibit J—Policy of complainant David L. Snodgrass.
Exhibit K—Policy of complainant Edward C. Pool.
Exhibit L—Policy of complainant Thomas J. Deupree.
Exhibit M—Policy of complainant Frank B. Hamilton.
Exhibit N—Policy of complainant Thomas M. Gates.

Complainants say that said policies were issued to them as members of said respondent Association under and by virtue of their membership therein, and that the said Association being a purely mutual corporation, these complainants and all other members are equally entitled to share *pro rata* in the proceeds of the estate of said respondent because of its insolvency and its abandonment of the corporate business, and because it has ceased to be and is no longer a "going concern" as hereinafter more fully shown and stated.

Complainants further say that as members of and policyholders in respondent Association they have paid in and contributed to the funds and capital of said Association large sums of money, representing their several proportionate shares and interests in the respondent Association, its capital and assets, and that other members having like rights have made like payments and are entitled to

like interests; and that respondent Association being insolvent and having been illegally and fraudulently deprived of its properties and assets as hereinafter shown is now insolvent, so that its properties have become and are a trust fund belonging to complainants and the other members and policyholders of respondent Association, which trust fund complainants are entitled to have taken possession of and administered upon in this Honorable Court as a court of equity. 13

In this connection, complainants say that the said policies or certificates of membership refer to and state that the same are issued "in consideration of the answers, statements and agreements contained in the application" for the same, and also to the Constitution or By-Laws of said Association. These complainants say that only two of the policies held by them have the said application attached thereto, to wit, "Exhibit H," being the policy of complainant Wm. H. Foote, and "Exhibit L," being the policy of complainant Thos. J. Deupree, and these two applications complainants make a part of this bill as though fully set out herein. 14

None of the complainants have copies of said Constitution or By-Laws and complainants other than those above named have no copies of their applications. Said Constitution or By-Laws and the originals of all said applications are in the possession of respondents or one of them. Complainants have requested copies of the same from respondents, but the same, although promised, have not been furnished, notwithstanding several requests therefor. Hence complainants are unable to exhibit the same any further than above stated, but they call upon and require the respondents to produce such Constitution or By-Laws and said 15

16 original applications upon the hearing, and complainants here plead and will reply upon the same when and if produced by respondents in so far as they may prove to be material to the rights of complainants as members of respondent Association.

II.

Complainants bring this, their amended bill of complaint as policyholders in and members of the respondent Mutual Reserve Fund Life Association of New York (hereinafter for brevity designated as "said Association" or "the Association"), and they
17 bring this, their amended bill, for their own use and benefit and for the equal use and benefit of all policyholders in said Association and members thereof occupying a like or similar status with them as policyholders and members of said Association whose membership is still in full force and effect, and whose policies are valid, subsisting and outstanding contracts of said Association, binding as between it, these complainants and all other policyholders in like situation.

In this connection, the complainants allege that the said respondent Association has many hundreds of members and policyholders having like rights and
18 interests and occupying the same status as these complainants, but that such members and policyholders are scattered throughout many States of the Union and in foreign countries; that it would be impracticable and unnecessary to join them as complainants in this suit, because these complainants bring and institute this suit for and in the behalf and interest of all members in and policyholders of respondent Association, no matter of what State or jurisdiction such stockholders may be citizens, residents and inhabitants; and complainants sue for all the members of respondent As-

sociation who are policyholders therein and whose policies are in good standing and in full force and effect and ask for them and each of them the same relief and protection which these complainants ask and pray for themselves and to which they allege themselves to be entitled.

Complainants, as members and policyholders in said Association claim and demand against it, for themselves and for those for whom they sue, their full pro rata interest as members and policyholders in the properties and assets of said Association or the proceeds thereof, and allege and charge that their said interests and the interests of those for whom they sue exceed in amount, exclusive of interest and costs, the sum of Two Thousand ($2,000) Dollars, and in fact aggregate in amount the full value of the assets and properties of respondent Association, to wit, the sum of Two Million ($2,000,000) Dollars or more, and complainants say that the amount in controversy herein is the amount of the full value of the assets and properties of the respondent Association.

Complainants aver that they, each and all, severally claim to be severally entitled to recover of the defendant Association a sum exceeding $2,000 each, exclusive of interest and costs, and that the assets of the Company, after paying its just debts and costs of this proceeding to wind it up and distribute its assets, are and will be sufficient to pay to complainants and to all other members and policyholders of said Association a large proportion and percentage of their claims and demands against it; but they say that, if said assets are not taken in charge and conserved and administered by a court of equity the same will be wasted and frittered away, and the losses of complainants and the other members of said Association will be greatly

increased, and the complainants will thereby be irreparably injured.

III.

That respondent Association is a domestic corporation of the State of New York, organized and existing under Chapter 267 of the Laws of New York of 1875, and under Chapter 175 of the Laws of New York of 1883, having its corporate situs in said State, with its principal office and place of business in said State in the City of New York, and County of New York, and that said respondent Association is domiciled in and an inhabitant of the Southern District of New York.

IV.

That respondent Mutual Reserve Life Insurance Company (hereinafter for brevity designated as "said Company" or "the Company") is a domestic corporation of the State of New York, organized and existing under the laws of said State, having its corporate situs in said State, with its principal office and place of business in the said State, in the City of New York and County of New York and that said respondent Company is domiciled in and an inhabitant of the Southern District of the State of New York.

V.

That respondent Association was organized on or about the 13th day of January, 1881, pursuant to the provisions of Chapter 267 of the Laws of New York of 1875, passed May 12, 1875, entitled "An Act for the incorporation of societies and clubs for certain lawful purposes," and the Acts amendatory thereto, and that it was so organized at said date for the objects and with the purposes set forth in its Certificate of Incorporation, which Certificate

of Incorporation was filed January 13, 1881. For the terms and provisions of said Certificate of Incorporation and the powers thereby acquired and conferred upon said respondent Association, complainants refer to a copy of said Certificate of Incorporation of said Association hereunto annexed and marked "Exhibit No. 1," and they ask that said exhibit shall be treated for all purposes as a part of this amended bill as though fully set out herein; a certified copy of same is exhibited with complainants' original bill heretofore filed in this cause.

VI.

Complainants further say that afterward in the year 1883, the Legislature of the State of New York enacted a law entitled "An Act to provide for the incorporation and regulation of co-operative or assessment life and casualty insurance associations and societies," the said law being Chapter 175 of the Laws of New York of 1883; and that thereupon and thereafter respondent Association, under and pursuant to the laws of New York for such cases made and provided, amended its Certificate of Incorporation so as to conform its objects, plans and purposes to the provisions, purposes and intendment of said Chapter 175 of the laws of New York of 1883, and complainants herewith exhibit, and mark the same "Exhibit No. 2," a copy of said Amended Certificate of Incorporation of said Association and ask that the same be treated for all purposes as a part of this bill as though fully set out herein; a certified copy of same is exhibited with complainants' original bill heretofore filed in this cause.

VII.

Complainants charge that respondent Association exists and is organized under Chapters 267 of

the Laws of 1875 and 175 of said Laws of 1883, and that its objects and purposes, corporate powers, rights and duties are those set forth and stated in said laws and in the aforesaid Certificate of Incorporation and Amended Certificate of Incorporation, "Exhibits Nos. 1 and 2," aforesaid, and that it has no other rights, powers, duties, obligations or legal status than such as are conferred upon it by said Certificate of Incorporation and Amended Certificate of Incorporation under the laws aforesaid, and that the rights, duties, obligations and status of complainants and all other members and policyholders in respondent Association are such and such only as arise under and by virtue of the laws aforesaid and out of the powers, rights and franchises conferred upon respondent Association by said Certificate of Incorporation and amended Certificate of Incorporation aforesaid; *and complainants, upon advice of counsel, charge that all changes or pretended changes, amendments or pretended amendments, re-incorporations or pretended re-incorporations, of respondent Association, except those hereinbefore stated and set forth, are illegal, fraudulent, null and void and in violation of the laws of New York and of the Constitutions of the United States and of the State of New York, as hereinafter more fully set forth and stated.*

"Respdts.' Exception No. 1, p. 115. "Allowed by Sp. Master, p. 141. "Complts.' Exception No. 1, p. 148."

VIII.

Complainants further say that respondent Company Mutual Reserve Life Insurance Company is a *de facto* corporation, purporting to be organized under Chapter 690 of the Laws of New York of 1892, being that chapter of the general laws known as "The Insurance Law," and the amendments thereto, and particularly being incorporated or purporting to be incorporated under Section 52 of said Chapter 690 of the Laws of 1892 as said section

was amended and now standing in said Act under and pursuant to the amendment thereof contained in Chapter 722 of the Laws of New York of 1901. And complainants further say that said respondent Company was a *de facto* corporation, incorporated and organized on or about the 17th day of April, 1902, under the following circumstances:

Respondent Association (Mutual Reserve Fund Life Association) had for a considerable period of time prior to said 17th day of April, 1902, and then was, insolvent; its liabilities were in excess of the true value of its assets by a large amount, *and it had become and was incapable of attaining the objects and purposes for which it had been organized, and of carrying out as between itself and its members and policyholders, the mutual and reciprocal contracts, obligations and agreements between said Association and its members and policyholders generally,* these complainants being at said time members and policyholders therein.

"Respdts.' Exception No. 2, p. 116. "Allowed by Sp. Master, p. 141. "Complts.' Exception No. 2, p. 143."

The officers and directors of said Association at said date were the following named persons:

Frederick A. Burnham, President; Hillary Bell, Horace H. Brockway, George Burnham, Jr., Richard Dewes, George D. Eldridge, Edward M. L. Ehlers, George W. Harper, Charles E. Mabie, Elmer A. Miller, W. T. B. Milliken and John J. Acker, directors, Charles W. Camp being the secretary of said respondent, but not a director thereof.

Long prior to said date, it had become known to said officers and directors, as these complainants are informed and believe, that said respondent Association was insolvent; *that its plan and method of operation were such that it was impossible for it to effectuate the objects for which it had been organized, and that it was impossible for it to keep and carry out its contracts with and obligations to its subsisting members and policyholders;*

"Respdts.' Exception No. 3, p. 116. "Allowed by Sp. Master, p. 141. "Complts.' Exception No. 3, p. 143."

"Respdts.' Exception No. 4, p. 116. "Allowed by Sp. Master, p. 141. "Complts.' Exception No. 4, p. 148."

That with knowledge of this state of affairs, said respondent Association's said officers and directors had for a considerable period of time prior to the 17th day of April, 1902, being engaged in a fraudulent scheme of administration and manipulation of the affairs of said respondent Association through and whereby they had illegally and fraudulently deprived many of the then members and policyholders of said Association of their membership rights, and their rights under their said policies, forfeiting, or pretending to forfeit many of said policies because of failures or refusals upon the part of many members of said Association to meet and pay demands for premiums far in excess of the contract obligations of said members and policyholders to respondent Association.

"Respdts.' Exception No. 5, p. 116. "Allowed by Sp. Master, p. 141. "Complts.' Exception No. 5, p. 148.

Complainants and many other members and policyholders of said Association, however, met and paid the calls for such illegal premiums and charges, but under threats of forfeiture oppresively made and by some if not all under protest, and have thereby preserved intact their rights as members and policyholders in respondent Association. The said officers and directors of respondent Association have also illegally and without warrant of law discriminated between complainants and other members of said Association, and said Association in the matter of the assessment and collection of premiums, and have, as complainants are informed and believe, fraudulently converted to their own use large sums of money, the property of said Association, for which they will be accountable to it or its receiver.

"Respdt.' Exception No. 6, p. 117. "Allowed by Sp. Master, p. 141. "Complts.' Exception No. 6, p. 144.

Complainants charge that by reason of the maladministration of the affairs of respondent Association as aforesaid, by the said officers and directors thereof, and by the fraudulent and deceitful practices and representations of the said officers and di-

rectors, many of the members and policyholders in said Association had been, prior to said April 17, 1902, induced to make and pay to said Association illegal and fraudulent payments of premiums or calls upon their policies in violation of the terms of said policies, and of the obligations of said Association to them, but that many of such payments had been made under protest by said members and policyholders, and among others by some of these complainants. That prior to the said 17th of April, 1902, neither complainants nor the members and policyholders of respondent Association generally had any knowledge or notice of any attempt to make any re-incorporation or new re-incorporation of said Association under Chapter 690 of the Laws of New York of 1892, and especially under Section 52 of said law as amended by Chapter 722 of the Laws of New York of 1901. And complainants further say in this connection that they have never received any notice or information from said Association, or its said officers and directors of any re-incorporation or change in the status of said Association prior to June 2, 1902, at or about which date complainants and other members and policyholders of respondent Association received a printed slip headed "Note Change of Name," which slip or notice in full reads as follows, to wit:

37 38 39

NOTE CHANGE OF NAME.

Make checks and money orders payable to

MUTUAL RESERVE LIFE INSURANCE CO.

On April 17, 1902, Mutual Reserve Fund Life Association re-incorporated as a mutual level premium company under the title of Mutual Reserve Life Insurance Company. Attention is called to this change of name and to the accompanying Report of the re-

40 cent examination of the corporation by the Superintendent of Insurance of the State of New York, which shows a surplus over liabilities of $466,885.48.

This re-incorporation, while ensuring the stability of the Company makes no change in your policy.

CHARLES W. CAMP,
Secretary.

Form B. 181.

An original of said printed slip or notice is exhibited with complainants' original bill heretofore filed in this cause, marked "Exhibit No. 3" and a
41 copy of same is exhibited herewith marked "Exhibit No. 3" to this amended bill.

At the same time that said "Exhibit No. 3" was received by complainants and other members and policyholders of said Association, they received a *so-called "premium-call," designated "Ten Year Distribution Deposit Plan, Premium Call 122, Mutual Reserve Life Insurance Company, Frederick A. Burnham, President,"* which circular notice or call was dated New York, June 2, 1902. An original printed copy of said notice or premium call is exhibited with complainants' original bill heretofore filed in this cause marked "Exhibit No. 4" to this bill, and a copy of same is exhibited herewith
42 marked "Exhibit No. 4" to this amended bill.

"Respdts.' Exception No. 7, p. 117. "Allowed by Sp. Master, p. 141. "Complts.' Exception No. 7, p. 144."

Complainants further say that, in 1893, the Legislature of the State of New York enacted a law, being Chapter 690 of the Laws of New York of 1893, entitled "An Act authorizing all insurance companies transacting business on the co-operative or assessment plan to re-incorporate as a stock corporation under its existing corporate name," and that in and by said law it was enacted and provided in Section 2 thereof that "before the Superintendent of Insurance shall be required to file and record

the certificate of such re-incorporation, he shall be satisfied that the same has been approved by a majority vote of the members of the company present and voting at the meeting of the insured called to consider same, at which meeting a written or printed notice shall have been mailed to each member who shall have been such for thirty days, directed to his address appearing on the Company's books at least thirty days before the day fixed for such meeting." 43

Complainants further say that said Association was a mutual insurance association or society, organized and existing as aforesaid, on and long prior to April 17, 1902, "transacting business on the co- 44
operative or assessment plan," but that no meeting of its members or policyholders was called prior to said date, or subsequent thereto, so far as complainants are advised, to consider any proposed amendment to its Certificate of Incorporation or any proposition to re-organize or re-incorporate it either as a stock company or otherwise, and that the first knowledge or notice that complainant or any of the members or policyholders of said Association, as complainants are informed and believe, had of the pretended re-organization or re-incorporation of said Association was that contained in said Exhibits Nos. 3 and 4.

Complainants further say that after the trans- 45
mission to complainants and other members and policyholders of said Association of said notices, Exhibits Nos. 3 and 4, aforesaid, that divers and sundry members and policyholders of these complainants, and particularly complainant D. L. Snodgrass entered into correspondence with said Association and wrote letters of inquiry to said Association, its officers and directors or to said respondent Company, Mutual Reserve Life Insurance Company, asking for definite information as to the al-

46 leged change of name of respondent Association and its alleged re-incorporation as a mutual level premium company. Complainants say that said letters of inquiry, and particularly the letter written by complainant D. L. Snodgrass, under date of June 3, 1902, were received by respondent Association or by its pretended successor, Mutual Reserve Life Insurance Company. Complainants exhibit herewith and mark same "Exhibit No. 5" a full, true and correct copy of the said letter of June 3, 1903, written by complainant D. L. Snodgrass and addressed to the Mutual Reserve Fund Life Association at New York City. They aver and
47 charge that the original of said letter was in due course of mail received by said Association, or its officers, and they ask that upon the hearing, said Association be required to produce the original of said letter in the absence of which they pray that the copy herewith exhibited may be admitted in evidence and treated for all purposes as an original. Complainants further say that after the receipt of said letter, "Exhibit No. 5," by respondent Association and by the respondent Company, to wit, on June 11, 1902, respondent Company by its Vice-President and Actuary, George D. Eldredge, made reply thereto, and they herewith exhibit a full,
48 true and correct copy of said reply as received by complainant D. L. Snodgrass and will, upon the hearing of this cause, produce the original of said letter, if required. They pray that said letter and the copy thereof, marked "Exhibit No. 6" herewith, be treated for all purposes as a part of this bill as though fully set out herein.

Complainants further charge that to other of the complainants and to the members and policyholders of said Association generally, who have made inquiries by letter and otherwise of said respondent Association as to said pretended re-organization

and re-incorporation, that respondent Company has written and sent divers and sundry letters of the same purport, substance and effect as the aforesaid letter of June 11, 1902, "Exhibit No. 6" to this bill. And complainants charge that said letter of June 11, 1902, "Exhibit No. 6" and all similar letters written as aforesaid by respondents or either of them, or by their officers, have been false, fraudulent and misleading, have been intended to deceive the complainants and the members and policyholders of respondent Association generally, have been so framed as to conceal the facts about the said pretended reorganization or reincorporation of respondent Association, and have been written and transmitted by the respondent Association, and the respondent Company, and the officers and directors thereof, for false and fraudulent purposes, and with the intent of deceiving and defrauding the complainants and the members and policyholders of the respondent Association generally. *And in this connection, complainants further say that the manifest purpose of said letter of June 11, 1902, "Exhibit No. 6" to this bill, and of the other similar letters above mentioned, is and has been to induce complainants and the other members and policyholders of respondent to bind, conclude and estop themselves by assenting to the pretended re-organization or re-incorporation of respondent Association, or to lose, surrender and forfeit their rights as members and policyholders therein; and that, in fact, many of the members and policyholders of respondent Association have been deceived into making payments of calls or premiums to respondent Company, and others of the members and policyholders of said Association have been fraudulently caused to forfeit their rights as members and policyholders. But these complainants, having taken the advice of counsel, and now made a personal investigation o'*

"Respdts.' Exception No. 11, p. 118. "Allowed by Sp. Master, p. 141. "Complts.' Exception No. 8, p. 144."

52 *the matters and things aforesaid, upon the advice of counsel, invoke the equitable jurisdiction of this Honorable Court for their protection as against the frauds, and wrongs hereinbefore and hereinafter set forth, and alleged as against the respondent Association and the respondent Company.*

Complainants further say that upon the examination by their counsel of the records in the office of the County Clerk of the County of New York in the State of New York, they find duly registered in said office what purports to be a Declaration and Charter of the Mutual Reserve Life Insurance Company, one of the respondents, and that said Declara-
53 tion and Charter purports to certify that the Mutual Reserve Fund Life Association, another of the respondents, "has duly accepted the provisions of the Act of the Legislature of the State of New York, being Chapter 69 of the Laws of 1892," known as "the Insurance Law and the amendments thereto, and in conformity with the same duly adopted the following amended charter." And thereafter follows a series of articles purporting to be the charter of respondent Mutual Reserve Life Insurance Company. Complainants exhibit herewith and mark same "Exhibit No. 7," a full, true and correct copy of said Declaration and Charter of the
54 Mutual Reserve Life Insurance Company, together with copies of all memorandum and endorsements thereon as the same appear of record in the office of the County Clerk aforesaid, and complainants pray that the same may be treated for all purposes as a part of this bill as though set out herein in full; a certified copy of same is exhibited with complainants' original bill heretofore filed in this cause.

IX.

Complainants further say that the first knowledge they had of the existence of said Declaration

and Charter of respondent Company (Exhibit No. 7 aforesaid) was obtained by them through their counsel on the 30th day of June, 1902, *and that prior to said date the only knowledge or information they had regarding any pretended re-organization or re-incorporation of respondent Association was such as they obtained through the receipt of the notices aforesaid, to wit, Exhibits Nos. 3 and 4 to this bill,*

"Respdts.' Exception No. 12, p. 118. "Allowed by Sp. Master, p. 141. "Complts.' Exception No. 9, p. 144."

And that all and singular the acts, proceedings and transactions, whatsoever and whensoever they may have been, whereby the aforesaid officers and directors of respondent Association sought through said Declaration and Charter of Mutual Reserve Life Insurance Company (Exhibit No. 7 to this bill) to re-organize and re-incorporate said Association and change the nature and character thereof and modify, alter and change the relations of said Association to complainants and its members and policyholders generally, were done secretly and fraudulently by the said officers and directors and without notice to the complainants or any of them or to the members and policyholders of respondent Association generally; and complainants charge that the aforesaid officers and directors of respondent Association, headed by Frederick A. Burnham, President of said Association, devised said scheme, and procured legislation intended to authorize the same, and that said scheme and said attempted re-incorporation of respondent Association were secretly and fraudulently conceived and executed, for the purpose and with the intention of depriving complainants and the other members and policyholders of respondent Association of their membership rights and privileges, and of abridging the same, and that by their said course in the premises, said officers and directors sought and intended to defraud the complainants and the members and policyholders of the respondent As-

"Respdts'. Exception No. 13, p. 118. "Allowed by Sp. Master, p. 141. "Complts.' Exception No. 10, p. 145."

sociation generally, and sought and intended to deprive them of their rights as members and policyholders, or to cause a forfeiture of the same.

"Respdts.' Exception No. 15, p. 119. "Allowed by Sp. Master, p. 141. "Compits.' Exception No. 11, p. 145."

Complainants further charge, upon advice of counsel, that all of the proceedings of the officers and directors of respondent Association in making, executing, entering into, promulgating, procuring and filing the aforesaid Declaration and Charter of Mutual Reserve Life Insurance Company as a reincorporation of respondent Association, Mutual Reserve Fund Life Association, were without warrant or authority of law and in violation of the Laws of the State of New York.

"Respdts." Exception No. 16, p. 119. "Allowed by Sp. Master, p. 141. "Compits.' Exception No. 12, p. 145.

And upon advice of counsel complainants further charge that Chapter 722 of the Laws of New York of 1901 amendatory of Section 52 of Article 1 of Chapter 690 of the Laws of New York of 1892, known as the "Insurance Law," is in violation and contravention of the Constitution of the United States and of the Constitution of the State of New York, in so far as said law has the meaning and effect, or may be construed to have the meaning and effect, given to it by the acts and conduct of the respondent corporations and their aforesaid officers and directors, in and through their adoption or pretended adoption as articles of re-organization and re-incorporation of the defendant Association of the provisions contained in said Declaration and Charter as shown by Exhibit No. 7 aforesaid.

And in this connection complainants, upon advice of counsel, further charge that said law Chapter 722 of the Laws of New York of 1901, if its effect and meaning be such as to authorize the pretended re-organization and re-incorporation of the respondent Association by the officers and directors thereof, without due notice to and without the knowledge and consent of complainants or any of the members and policyholders of respondent Association and

in the manner and form shown by the said Exhibit No. 7, is in contravention and violation of Section 10, Article 1, of the Constitution of the United States, which prohibits any State from enacting a law "impairing the obligation of contracts" and complainants invoke and rely upon said provision of the Constitution of the United States, and say that under said provision of the Constitution of the United Sates said law is unconstitutional, invalid and void. 61

And, upon advice of counsel, complainants further charge that said law of the State of New York, if given the construction, meaning and effect aforesaid, is in contravention and violation of those provisions of the Constitution of the United States and of the State of New York, which provide that no person shall be deprived of his property without due process of law, in this, that they deprive the complainants and the other members and policyholders of respondent Association of their vested contract rights and privileges and of their property rights under their contracts and agreements with respondent Association, without due process of law. And complainants as citizens and residents of the State of Tennessee and non-residents of the State of New York, invoke the provisions of Article XIV of the Amendments to the Constitution of the United States, and upon advice of counsel allege and charge that said law of the State of New York, if given the force, meaning and effect aforesaid, is in violation of those clauses of the Fourteenth Amendment to the Constitution of the United States, which provides that "No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law." 62 63

64

X.

"Respdts' Exception No. 20, p. 120. "Allowed by Sp. Master, p. 141. "Compltz' Exception No. 13, p. 145.'

Complainants aver that the attempted re-incorporation to which reference is herein made was illegal and invalid (first), because the Mutual Reserve Fund Life Association undertook to re-incorporate as the Mutual Reserve Life Insurance Company when the act under which said re-incorporation was attempted, to wit, Chapter 690 of the Laws of 1892 as amended, only authorized a re-incorporation under the existing corporate name and upon the consent of its members and after notice to them; and (second) because the act of Chapter 690 of the Laws of 1893 only allowed a re-incorporation as a

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stock company, whereas in the said attempted reorganization it is expressly declared that the Mutual Reserve Life Insurance Company shall not have any capital stock.

And complainants aver that no existing or subsequent law has validated or authorized this reincorporation, as they are by their counsel advised.

And complainants further aver that neither Chapter 690 of the Act of 1892 nor Chapter 725 of the Laws of 1893, nor Chapter 722 of the Laws of 1901, when properly construed, authorizes such amended charter, and that if either can be construed to authorize such act, without the consent of the stock-

66

holders or members of the Association, then it is void both under the Constitution of the State of New York and the Constitution of the United States as violating the provisions herein elsewhere set out. But complainants especially call attention to the fact that while all of these acts purport to authorize the re-organization of existing corporations, neither act contemplates that it shall be done without the assent of the members or stockholders, for all expressly provide that this reorganization or re-incorporation can only be had without prejudice to any

pending action or proceeding or any rights previously accrued. 67

If these laws are susceptible of any other construction, they are necessarily invalid as being in contravention of rights of members and stockholders, previously accrued, to continue their relationship to the corporation and the property rights therein secured which could not be taken from them by the Legislature, or otherwise, without their consent. The plain implication, therefore, is that when the Legislature authorized these re-incorporations, it meant to authorize them only upon such consent and to put these corporations in an attitude to re-incorporate, provided they obtained it. The express 68 *reservation in favor of "rights previously accrued" must necessarily give them this meaning and complainants insist that to be sustained as valid laws, they must have this construction, and complainants aver that no such consent was obtained of them or of the other stockholders and members and that the re-incorporation is void and of no effect as against their rights.*

XI.

Complainants aver that said Association has for several years past been hopelessly and wholly insolvent and enabled to make the pretense of continued corporate existence only by depriving its 69 members and policyholders of their just rights and by discriminating between and actually defrauding its policyholders and their legal representatives; and that the condition of the Association is now such that the insurance to which complainants and other members and policyholders are entitled, and which was the sole purpose of the complainants and other policyholders in joining the Association, is valueless and a mere sham and fraud.

Complainants aver, in this regard, that during the year 1901, of just claims settled amounting to

70 nearly, if not quite, a million dollars, the Association forced the beneficiaries of said policies to accept about one-half of that amount, paying to some of the holders of policies a very small per cent. of the amount that should have been paid, and by false and fictitious claims, by resistance of just demands, by litigation and other harassing expedients, forced settlements that were arbitrary and unreasonable and unjust, and which was a fraud upon the rights of those who had taken out policies in the Association for the purpose of securing insurance.

Complainants aver that this wholesale and fraudulent "scaling" of death claims was necessary to the
71 continuance of the Association, which had gotten into and now is in a condition where the corporate purposes are not susceptible of being carried out; that the scheme of the Association is incapable of successful execution, and the further effort at corporate existence means a waste and loss of all the assets of the Association.

Said Association has now outstanding against it death claims unpaid and unsettled amounting to about twelve hundred thousand dollars and in many of the States wherein the Association has largely operated the right to do business is denied the Association and it has been forced by the proper
72 authorities to retire from many States, and the enormous unpaid death claims now outstanding and the action of the authorities in a number of States in driving the Association therefrom, whereby its field for business is greatly restricted, and to an extent not contemplated by any one of the complainants and other policyholders at the time they became policyholders therein, necessarily brings about a condition making the fulfillment of the original corporate plan and purpose impracticable of consummation and incapable of being carried out.

Said Association has been forced to expend large sums of money in fruitless litigation, brought on by its inability to carry out its contracts and the assertion of pretended liens on the policies, and the Association will be forced to continue to expend and waste such large sums of money as will inevitably result in squandering and wasting its assets to the irreparable injury of complainants and others interested in the affairs and assets of said Association.

"Respdts.' Exception No. 25, p. 121. "Allowed by Sp. Master, p. 141. "Compits.' Exception No. 14, p. 145."

The illegal and fraudulent increased assessments that have been made (arising in large measure from inability of the Association to comply with its contracts and the expensive and extensive litigation which resulted) has driven a large number of members from the Association, whereby its revenues and receipts are materially lessened, and its business brought into confusion; and the action of the authorities in many States bringing the Association into disrepute in the business world, whereby a successful corporate continuance became impossible, all combining, make it meet and proper for the Court to administer what yet remains of the assets of the Association for the benefit of those legally entitled thereto.

"Respdts.' Exception No. 26, p. 121. "Allowed by Sp. Master, p. 141. "Compits.' Exception No. 15, p. 146."

Complainants attach hereto as "Exhibit No. 7-1-2" what they aver to be a list of "scaled" policies settled in 1901.

Complainants aver that for four or five years past the Association has pursued the above-mentioned practice of "scaling" policies, whereby of just claims many hundred thousand dollars have been denied to those rightfully entitled thereto, but the Association is now doing and for twelve months past has done so much in excess of its previous practices in this regard that the same now amounts to an obvious fraud on the policyholders, which fraud will be in like manner practiced upon complainants and

"Respdts.' Exception No. 28, p. 121. "Allowed by Sp. Master, p. 141. "Compits.' Exception No. 16, p. 146."

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those for whom they sue, if the affairs of said Association are not speedily wound up.

XII.

"Respdts." Exception No. 29, p. 122. "Allowed by Sp. Master, p. 141. "Complts.' Exception No. 17, p. 146."

Complainants further charge that on and before the 17th day of April, 1902, respondent Association had become and was insolvent; that its assets were dwindling, its business decreasing, its death losses growing and increasing in number and amount, and its liabilities far in excess of its assets or the possible proceeds thereof. That, in this condition of affairs, it became and was impossible for respondent Association to continue the transaction of its business and to attain and effectuate the objects and purposes for which it had been organized and incorporated; that by reason of its said insolvency and its said condition, the said Association on or about the 17th day of April, 1902, ceased to be a going concern, abandoned the business for which it had been organized and incorporated, and that thence hitherto it has ceased to carry on and transact the business for which it was incorporated under the laws of New York, pursuant to which its original and amended certificates of incorporation (Exhibits Nos. 1 and 2 aforesaid) were obtained and granted to it.

Wherefore, upon advice of counsel, complainants charge that the properties of respondent Association have become and are now a trust fund, impressed with a trust for the use and benefit of the members, policyholders and creditors of respondent Association, and that said trust fund and the properties and assets of respondent Association are subject to the equitable jurisdiction of this Court and to be taken into custody and control of this Court through the appointment of a Receiver therefor and to be herein administered for the use and benefit of

the complainants and all other persons, whether policyholders or creditors, entitled to share therein or in the distribution of the proceeds thereof under the allegations and the prayer of this amended bill.

XIII.

Complainants further charge that respondent Company (Mutual Reserve Life Insurance Company) has fraudulently, illegally and in violation of law possessed itself of and converted to its own use the properties and assets of respondent Association, and that it is now in the actual possession of said properties and assets, but is without title thereto, and that it has obtained the same without consideration and in violation of the laws of the State of New York and of the Constitution of the State of New York and of the United States.

"Respdts.' Exception No. 31, p. 122. "Allowed by Sp. Master, p. 141. "Complts.' Exception No. 18, p. 146."

And complainants are advised by counsel, and upon such advice allege the fact to be, that they are entitled to invoke the equitable jurisdiction of this Honorable Court to sequestrate and seize upon said properties and assets of respondent Association, so wrongfully converted, taken over and held by respondent Company, and to have a Receiver appointed for the same, and to have the respective rights, interests and equities of complainants and all other members and policyholders of respondent Association, as well as the rights of creditors thereof, heard, determined and adjudged in this Court and in this cause under the allegations and the prayer of this amended bill.

"Respdts.' Exception No. 32, p. 122. "Allowed by Sp. Master, p. 141. "Complts.' Exception No. p. 19, 147."

XIV.

Complainants further charge, upon information and belief, that the management of respondent Association by its aforesaid officers and directors has been extravagant, wasteful, negligent, careless and

"Respdts.' Exception No. 33, p. 122. "Allowed by Sp. Master, p. 141. "Complts.' Exception No. 20, p. 147."

fraudulent; that said officers and directors have, without the knowledge or assent of complainants and the other members and policyholders of respondent Association, and without authority of law, through said pretended re-incorporation of said Association, under Exhibit 7 aforesaid, converted to their use and to the use of respondent Company the properties and assets of respondent Association, destroyed and abandoned the franchises of respondent Association, caused respondent Association to cease and abandon the transaction of its corporate business, and thus and thereby transformed the properties and assets of respondent Association into a trust fund, in which fund and the proceeds thereof complainants and all other members and policyholders of respondent Association and the creditors thereof are entitled to share as their several priorities may be found and adjudged, upon a marshaling of the claims against respondent Association.

XV.

Complainants, upon advice of counsel, further say that their relations and the relations of each of them to the respondent Association are those of members and policyholders in a purely mutual association or corporation, and that their rights, privileges and immunities are equal and co-relative, and that respondent Association has no creditors to any considerable amount except its members, who, as such, are policyholders, save in so far as by reason of the death of certain of its members their legal representatives may have become and may be creditors of respondent Association.

In this connection, complainants say that the properties and assets of respondent Association are sufficient to pay off and discharge all accrued claims against respondent Association arising out of the deaths of its members holding policies issued

by it, and that after the payment of all such accrued claims in force there may remain a sum of money for distribution among these complainants and other members and policyholders of respondent Association as their interests may severally appear, but no sum that can be realized, if any such there be, will be sufficient to pay and discharge the debts of said Association and the death claims accrued against it upon its policies, and repay to complainants and other members the sums severally invested and paid in by them under their membership obligations. 85

Upon the facts aforesaid, complainants aver and charge that respondent Association, having ceased to carry on the business for which it was organized, and having abandoned its business and ceased to be a going concern and having permitted its property to be fraudulently taken over and converted by the respondent Company without warrant or authority of law, has, as to the administration of its affairs and the possession, control and disposition of its properties and assets, become subject to the jurisdiction of this Court as a Court of Chancery, and that complainants, by reason of their interest in respondent Association as members and policyholders, are entitled to have the properties and assets of respondent Association taken into the care, custody and control of this Court through the appointment of a Receiver therefor, and to have the same cared for, conserved and sold and the proceeds thereof distributed as equity and good conscience may require.

"Respdts.' Exception No. 35, p. 123. "Allowed by Sp. Master, p. 141. "Complts.' Exception No. 21, p. 147." 86

87

And in this connection, upon information and belief, complainants aver and say that respondent Company (Mutual Reserve Life Insurance Company) is insolvent; that it is in possession of the properties and assets of respondent Association in violation of law and of the contract rights of the members and policyholders of respondent Associ-

"Respdts.' Exception No. 36, p. 123. "Allowed by Sp. Master, p. 141. "Complts.' Exception No. 22, p. 147."

88 *ation and of these complainants as such; that it is impossible for it to carry out or affect the objects and purposes for which respondent Association was originally organized; that it is repudiating and declining to carry out the contracts of respondent Association with complainants and the other members and policyholders of respondent Association; that it is deliberately, intentionally and fraudulently depriving complainants and other members and policyholders in respondent Association of their rights and privileges as members and policyholders, and is by unreasonable, unjust and illegal demands and exactions causing the members and policyholders*
89 *of respondent Association and seeking to cause these complainants as members and policyholders in said Association to lose, forfeit and surrender their rights as such, and that this is being done by respondent Company under and pursuant to a fraudulent and illegal combination and conspiracy upon the part of Frederick A. Burnham and the other officers and directors of respondent Company, who are the same persons who were or are officers and directors of respondent Association, to secure for respondent Company without regard to the rights of the members and policyholders of respondent Association all the assets and properties of re-*
90 *spondent Association, in order that respondent Company, its officers and directors may make advantage and profits therefrom.*

XVI.

Respondent Company, at some date subsequent to April 17, 1902, circulated and distributed what purports to be a financial statement of the assets and liabilities of respondent Company upon April 16, 1902, as found and reported by the Insurance Department of the State and the Examiner thereof. A copy of said financial statement of assets and lia-

bilities is exhibited herewith, marked *Exhibit No. 8.* 91
Said exhibit is referred to and made a part of this bill as though fully set out herein.

Complainants charge that said statement of assets and liabilities, upon an analysis and classification thereof, shows respondent Association to have been insolvent prior to April 16, 1902, and that respondent Company was insolvent upon said date and remains insolvent at this time, and as to this complainant directs attention to the following items in said statement.

Under the head of "Assets" appears the following:

"Liens allowed not exceeding statutory reserve 92
charged as a liability against each policy respectively, $2,020,048.02."

By adding this sum to all the other assets of respondent Company as set out in said statement, it appears that the toal assets of respondent Company, including said "lien claims," amount to $5,790,400.83.

Upon the other hand, under the heading of "Liabilities" the total liabilities of the Company are stated as $5,323,515.35, showing an apparent excess of assets (including said so-called "liens") over liabilities of $466,885.48.

Complainants charge, however, that the item of 93
assets of $2,020,048.02 aforesaid is not and does not represent any property or available collectible asset of respondent Company or of respondent Association, but that on the contrary the same is and represents only an unauthorized and illegal charge upon the books of respondent Company and of the respondent Association against complainants and other members and policyholders of respondent Association in the nature of a pretended abatement of the value of the policies of complainants and the other members and policyholders of respondent As-

sociation; and that said "lien claim" scheme was concocted and devised and said charge against the members and policyholders of said Association was placed upon the books of said Association as an "asset" for the sole purpose of covering up the showing of insolvency upon the face of the books of said Association, and to make an apparent showing of solvency on its said books and reports.

Complainants say that respondent Association wrongfully, illegally and fraudulently caused this charge to be made against the policies of complainants and the other members and policyholders of respondent Association as a "lien" upon their certificates or policies of insurance, and that said alleged charges or "liens" have been so placed and charged as an alleged indebtedness of complainants, and other members and policyholders of respondent Association and as a sum to be deducted from the amount of insurance agreed in the certificates or policies to be paid to the complainants and other members and policyholders of the respondent Asso- the contract rights of the complainants and other members and policyholders of the respondent Association; that the same is not secured by any money, property or pledge, and is not in fact or in contemplation of law an asset from which respondent Association or respondent Company can realize any sum of money whatsoever, but is only a way of "padding" the assets of said respondents to make a showing of solvency upon the books and published reports of said respondents.

"Respdts.' Exception No. 40, p. 124. "Allowed by Sp. Master, p. 141. "Compits.' Exception No. 23, p. 148."

Complainants further say that the insolvency of respondent Association and respondent Company on April 16, 1902, and thence hitherto is clearly shown by deducting said pretended and uncollectible item of $2,020,048.02 from the aggregate assets of $5,790,400.83, as shown upon said financial statement Exhibit No. 8, which leaves the assets of re-

spondent Association and respondent Company upon said date upon its own showing, as but $3,770,352.81 as against admitted liabilities of $5,323,515,35, showing a deficiency of $1,553,162.54. 97

Said statement of assets is in other respects false and misleading and is not a true and correct showing of the value of the assets of respondent Association, but a grossly "padded" statement of the value of such assets, which are stated at values far in excess of their true valuation.

In this connection, upon information and belief, complainants further say that said pretended "liens" upon the policies of members and policyholders have not been legally created or made; that they have not been consented to or acquiesced in by the policyholders generally; that they have been charged against the policyholders without their knowledge or consent, and that the policyholders generally, including these complainants, have been deceived as to the nature of said liens and the charge thereof by false and fraudulent representations regarding the same made by respondent Association, the respondent Company and the officers and directors of each of said respondents as aforesaid:

"Respdts.' Exception No. 42, p. 124. "Allowed by Sp. Master, p. 141. "Compits.' Exception No. 24, p. 148." 98

And, upon advice of counsel, complainants charge that said pretended liens are wholly invalid, ineffective and that they are without security in fact, or countenance in law, and while representing pretended loans to policyholders upon their policies, in fact represent only illegal, unwarranted and unauthorized charges made against the policies of complainants and other members and policyholders in respondent Association in violation of the contract rights of complainants and other members and policyholders and in violation of the laws of the State of New York.

"Respdts.' Exception No. 43, p. 124. "Allowed by Sp. Master, p. 141. "Compits.' Exception No. 25, p. 148." 9

"Respdts.' Exception No. 44, p. 125. "Allowed by Sp. Master, p. 141. "Complts.' Exception No. 26, p. 148."

As an illustration and specific instance as to how said respondents regard said "liens" complainants charge that in an action brought against said Association in the Supreme Court of New York County, New York, by Kate E. Bissell as plaintiff, it is alleged in the complaint (which is sworn to) that said plaintiff is the widow of one Charles R. Bissell and the beneficiary under two policies for $5,000 each carried by said Charles R. Bissell during his lifetime in said Association, and that upon one of said policies said Association paid to said plaintiff (beneficiary under said policy) the sum of $2,754.90 and "falsely and fraudulently and with a view to defraud and deceive the plaintiff, stated and represented to the plaintiff that there was due to the defendant Company (said Association) as unpaid assessments, charges or liens on the above mentioned policy the sum of $2,174.15 and the sum of $70.95 as the balance premium current policy year, and that the said Charles R. Bissell owed the defendant said sums at the time of his death"; that said Association then deducted the said sums from the sum of $5,000 due under said policy and paid to plaintiff the balance, to wit, $2,754.90 as above stated, "that plaintiff, believing the false representations made to her by the defendant, viz.: that the sum of $2,174.15 and the sum of $70.95 were charges or liens against the amount due under said policy, and relying thereupon was induced" by said Association to accept said amount of $2,754.90 and execute and deliver to said Association a general release therefor.

Said plaintiff in said complaint further alleges, as to the other of said policies (also for $5,000), that under like false and fraudulent representations, and with a view to defraud and deceive the said plaintiff, that the said Association represented that there was due to it, as unpaid assessments,

charges or liens on the said policy, the sum of 103
$2,092.95 and the sum of $212.85 as balance premium current policy year, and that the said Charles R. Bissell owed the said Association said sums at the time of his death; that said Association then deducted the said sums from the sum of $5,000 due under said second policy, and paid to said plaintiff, the balance, to wit, $2,717.48, and that said plaintiff, believing the false representations made to her by said Association as to said charges or liens against the amount due under said policy and relying thereon, was induced by said Association to accept said amount of $2,417.48 in payment of said second policy, and executed and delivered to said 104
Association a general release therefor.

That as to the statements and reports made in regard to both of said policies, the same were false and were known by said Association to be false when made and "were made with the intent to deceive and defraud" the said plaintiff, and that the said Charles R. Bissell, deceased, did not owe the said Association for premiums, assessments, liens or charges, or for any other claim.

Said plaintiff, in her said complaint, further says, "that upon learning of the fraud committed upon her by the said Association, she forthwith began this action, and hereby elects to rescind the general 105
release or releases executed by her to the defendant and hereby offers to pay the amount received under said policies, if at the close of the trial of this action it is found that the plaintiff is not entitled to retain the same."

The prayer of said complaint is:

First—That said Asociation be compelled to deliver up to said plaintiff the general releases above mentioned, and that the same be cancelled.

Second—That the policies of life insurance above mentioned be reinstated.

106 *Third—That plaintiff be allowed to retain the sums of money already received by her as part payment to her of the amount due her from the said Association.*

Fourth—That plaintiff have judgment against said Association for the sum of $4,527.62, with interest from the first day of April, 1901, and costs.

Said Association served an answer of great length to said complaint, setting up three "separate and distinct defenses" to the cause of action stated upon each of said policies, denied the charges of fraud, pleaded the releases executed by said plain-
107 *tiff, did not plead the validity of said so-called "liens," but in explanation of having attempted to pay the policies at less than their face value, alleged that the proceeds of the assessments levied and collected by said Association next after the death of the said Charles R. Bissell for the purpose of providing money for the payment of the benefits under said policies were insufficient to provide for the payment of the maximum benefit stated in said policies, and that there were no moneys in the death fund or in the reserve fund of said Association available to make up the deficiency or applicable to the payment of the benefits under the said policies, and that by reason thereof and in accordance with the terms*
108 *and provisions of the said policies or "certificates of membership" the aggregate amount due under the said "certificates of membership" was the total of the sums paid to said plaintiff prior to the execution by her of said general releases, and that the amounts so paid to said plaintiff by said Association were in "full satisfaction and discharge of all benefits payable under said certificates of membership and of all damages to the said plaintiff mentioned by reason of the non-payment thereof."*

After said plaintiff, through her attorneys, had

procured an order for an examination of said defendant's books, and had made such an examination, and the case had been put upon the day calendar of the Supreme Court for New York County for trial, the same was compromised, on or about January 12, 1903, by said defendant Association by its paying or causing to be paid in its behalf the sum of $4,000 in addition to the sums which had been paid to said plaintiff before the execution by her of said general releases. 109

These complainants set out this transaction for the purpose of showing a specific instance in which said Association discriminated in favor of some of its members as against others, and also of showing that when brought face to face with the decision of the question of the validity of the so-called "liens" which are reported by said Association in its statement of assets hereinbefore referred to, at more than $2,000,000, that the said Association is forced to admit not only that the said "liens" and the charges thereon are invalid and are not assets of the Company, but that they are in point of fact a liability of said Association. 110

Upon information and belief, complainants allege that this is only one of many instances of a similar kind.

111

Complainants further say:

That included in the financial statement of the respondent Mutual Reserve Life Insurance Company, under date of April 16, 1902 (Exhibit No. 8), appears as an asset the item, "Real Estate, book value $679,910.96"; that included in and forming a part of this alleged asset, as complainants are informed and believe, is a sum of about $481,153.60, which is invested in the building known as the Mutual Reserve Building, on the corner of Broadway and Duane Streets in the Borough of Manhat-

tan, City of New York, but that the said Mutual Reserve Building is not owned by the said Company nor was it owned by the said Association from which the said Company had taken it over through a wrongful conversion, as aforesaid, but it was and is a building upon leased ground, under a lease for a term of years, which, as complainants are informed and believe, is shortly to expire, at which time, as complainants are informed and believe, said building, under the terms of said lease, will cease to be the property of said Company or of said Association and pass to and become the property of the owners in fee of the ground upon which the said building it situated. Wherefore, complainants charge that said building does not represent and is not of its book value, as above set forth, and that in fact its true value to the said Company and the said Association is less than twenty per cent of its book value as above stated. And, upon information and belief, complainants further charge that said building, at the book value thereof, is included in the report of the said Insurance Company for the year 1902 as a part of its reserve or surplus, when in fact the same is not in any true sense a surplus and is not available for the payment of death losses or the protection of complainants and the other members of respondent Association.

Complainants charge that included in the alleged surplus of respondent Company and formerly likewise included in the statements of respondent Association, was a sum amounting to more than $450,000, which is invested in foreign countries for the sole protection of foreign policyholders and members, and that said sum is therefore not available for the payment of death losses accruing on policies held in this country, and that by the deposit of said moneys in foreign countries as aforesaid, for said purposes, the said Association, its officers and direc-

tors, and the said Company, have heretofore and are 115
now discriminating against these complainants, and other members and policyholders of said Association within the limits of the United States and are jeopardizing the rights and interests of the complainants and of all the other members and policyholders of said Association in like situation who are citizens of the United States. And complainants further charge, in this connection, that deducting the aggregate of said sum of $481,153.50 and said sum of $450,000, making a total of $931,153.50, from the total assets of said Company and of said Association, as shown by Exhibit No. 8, and it appears that said Association and said Company are 116
in fact not only without any surplus whatsoever for the protection of complainants and other policyholders and members within the limits of the United States, but that the said Association and the said Company are without any fund or funds and without any reserve or surplus of assets from which to pay death losses which have heretofore accrued as against it and which are now due and payable, and the said respondent Company is, as complainants are informed and believe, applying its funds and assets, which are in fact, as herein elsewhere more fully stated, the property of respondent Association, to the payment and adjustment of death 117
claims, and are, by such payments and adjustments, not only defrauding the holders of said claims with whom settlements at less than the full amount of said claims are being continually made, but are at the same time defrauding complainants and the other members of said respondent Association by applying to such payments the proceeds of the property and assets of respondent Association not legally applicable for such purposes, and that thereby the assets of said Association in the hands and possession of said Company are being contin-

118 ually decreased and depleted to the manifest injury of complainants and all the other members and policyholders of respondent Association in like attitude.

In this connection complainants call attention to the agreement and deed of trust executed October 18, 1882, between said Association and the Central Trust Company of New York, a copy of which is annexed to the policy or certificate of Frank B. Hamilton (made Exhibit M to this amended bill), whereby a "reserve fund for the exclusive benefit" of said Association's members is set apart and required to be deposited with the said Central Trust
119 Company, of New York, to be withdrawn only upon certain conditions in said agreement set out, and also to the "statement of the reserve or emergency fund" of said Association and the "certificate from the Central Trust Company of New York," copy of which is annexed to the policy or certificate of membership of complainant Simeon Marsh (Exhibit E to this amended bill), whereby it appears that on December 31st, 1894, the "total amount of the reserve or emergency fund" was $3,827,635.12, of which amount $2,287,476.51 was held by the said Central Trust Company under the above mentioned agreement.

120 Complainants allege that this entire fund has been withdrawn from the said Central Trust Company of New York, and, upon information and belief, that the same was withdrawn upon false and fraudulent representations made to said Central Trust Company of New York, and that substantially the whole amount thereof has been wasted and frittered away by the said Burnham and his associates in the management of said Association while they were in control thereof and before they caused the transfer of said Association's assets to be made to said respondent Company.

Complainants further charge that the reports and books of the respondent Association show that the new business accepted and paid for during each of the years 1894 to 1899 inclusive, decreased from about $53,477,500, to about $11,142,990; that the income of the Association during the year 1899 was about $563,698.01 less than the disbursements for that year; that the new business accepted and paid for and the insurance in force during each of the past few years is enormously decreased, as is shown by the following table: 121

Year	New business accepted and paid for.	Insurance in Force.
1896	$55,913,755	$325,026,061
1897	25,633,435	301,567,101
1898	18,505,440	269,169,321
1899	11,142,990	173,714,683

122

And that said decrease still continues.

That the expenses of each $1,000 of insurance in force in said Association and the cost for each $1,000 of new business during the last few years, has enormously increased, as is shown by the following table, based upon the said reports and books:

Year	Expenses to each $1,000 of insurance in force.	Cost per $1,000 of new business.
1896	$4.91	$11.31
1897	5.91	27.79
1898	6.65	28.80
1899	7.89	30.07

123

And that said increase still continues.

That during the past few years the legal and actuarial expenses of the Association have greatly in-

creased, as is shown by the following table, based upon said reports and books:

Year	Legal Expenses.	Actuarial Expenses.
1896	$7,293	$14,227
1897	22,605	16,975
1898	35,890	17,939
1899	81,719	18,777

And that said increase still continues.

That there was a marked selection against said Association in favor of other life insurance companies, so far as new insurance is concerned, and that the total number of policies held by members of said Association of the age of sixty years and under has, during the past few years enormously decreased, and that the total number of policies held by members of the Association of the age of sixty-one and over has, during the past few years, remained almost stationary, as is shown by the following table, based upon said reports and books:

	Total policies in force ages 60 and under on January 1st.		Total policies in force ages 61 and over on January 1st.	
Year	Number	Amount	Number	Amount
1896	99,458	$288,949,431	6.420	$19,709,940
1900	64,653	155,472,578	6,409	18,242,105

"Respdts.' Exception No. 53, p. 127. "Allowed by Sp. Master, p. 141. "Complts.' Exception No. 27, p. 149."

All of which, as these complainants allege, clearly shows that said Association cannot attain the objects for which it was organized and has been carrying on its business and obtaining new business at the expense and to the detriment of the complainants and other members of said Association, and that the same methods, with the same results, are being pursued by the respondent Mutual Reserve Life Insurance Company that were pursued by the said Association up to the time of the organization of said Company, and so long as said Association remained a "going concern."

That, as complainants are informed and believe, and upon such information and belief charge, the said Burnham, as President, and the said other officers and directors of respondent Company and respondent Association have, for a long time past and now are, making false and fraudulent reports as to the current business done by said Association and by said Company and as to the costs and expenses of obtaining said business and administering the affairs of said Association or of said Company, and that much of the business claimed and reported in this way has been in fact unclosed and uncompleted and in large measure has been cancelled, the only effect of such false and fraudulent representations being to deceive the general public as well as complainants and the other members of respondent Association and respondent Company.

That by reason of the facts aforesaid in connection with the other facts of like nature elsewhere in this amended bill recited, respondent Association became and the same now is and for a long time past has been insolvent.

"Respdts.' Exception No. 55, p. 127. "Allowed by Sp. Master, p. 141. "Complts.' Exception No. 38, p. 140."

XVII.

Complainants further say that the condition of insolvency set out in this amended bill has been brought about largely by reason of illegal payments by said Association of moneys belonging to said Association and to these complainants and other members of said Association under illegal, invalid and fraudulent contracts made with various persons, including some of the officers of said Association, under which, under the guise of "commissions paid to agents" large amounts of money have been abstracted from the treasury of said Association and paid nominally to the agents with whom said contracts were nominally made, but actually and in point of fact paid to certain officers and directors

and ex-officers and ex-directors of said Association in addition to their regular salaries in violation of law and in violation of the rights of these complainants. Complainants make this allegation upon information and belief derived from an examination of copies of pleadings, affidavits and proof in various suits and proceedings which have been brought and instituted by and against said Association and by and against Frederick A. Burnham, the President of said Association, up to the time when said Association became defunct, and the President of respondent Company since its organization; from which pleadings, proofs and affidavits it appears, and complainants on such information allege.

"Respdts.' Exception No. 57, p. 127. "Disallowed by Sp. Master, p. 141. "Allowed by Hazel, J., p. 171. Complts.' Assgmt. Errors. No. 17, p. 208."

THAT ONE E. B. HARPER, WHO WAS THE SAID BURNHAM'S IMMEDIATE PREDECESSOR AS PRESIDENT OF SAID ASSOCIATION, HAD, OR CLAIMED TO HAVE, A CONTRACT (WHICH COMPLAINANTS CHARGE WAS AND IS ILLEGAL, INVALID AND VOID) BY THE TERMS OF WHICH THE SAID HARPER WAS TO RECEIVE FROM SAID ASSOCIATION THE SUM OF TWENTY CENTS PER ANNUM PER $1,000 OF INSURANCE OBTAINED OR WRITTEN BY THE SAID ASSOCIATION DURING THE INCUMBENCY OF THE SAID HARPER AS PRESIDENT THEREOF, AND TO CONTINUE SO LONG AS ANY INSURANCE WRITTEN DURING THE INCUMBENCY OF THE SAID HARPER AS PRESIDENT SHOULD CONTINUE IN FORCE.

"Respdts.' Exception No. 58, p. 128. "Disallowed by Sp. Master, p. 141. "Allowed by Hazel, J., p. 171. Complts.' Assgmt. Errors. No. 18, p. 209."

AT THE TIME OF SAID HARPER'S DEATH HE WAS RECEIVING, UNDER SAID CONTRACT (IN ADDITION TO HIS SALARY, WHICH WAS ABOUT $25,000 PER ANNUM) ABOUT $60,000 PER ANNUM UNDER THE TERMS OF THE AFORESAID AGREEMENT.

"Respdts.' Exception No. 59, p. 128. "Allowed by Sp. Master, p. 141." Complts.' "Exception No. 20, p. 149."

Complainants allege that said contract was and is invalid and void, first, because made while the said Harper was an officer and director of said Association, and second, because the Board of Directors of said Association had no power to "enter

into a contract with a person by which it agreed to pay him a compensation extending beyond the time when he rendered services the extent of which might go beyond his life and the amount of which could by no possibility be known." (See Opinion of the Appellate Division of the New York Supreme Court, First Department, in case of Caldwell vs. Mutual Reserve Fund Life Association, 53 App. Div. Rep. 245, 250, 251.) 133

THE SAID HARPER DIED IN JULY, 1895. THE SAID BURNHAM HAD BEEN HIS PERSONAL COUNSEL FOR A LONG TIME PRIOR THERETO AND DREW HIS WILL, BY THE TERMS OF WHICH SAID HARPER BEQUEATHED A ONE-THIRD INTEREST IN THE SAID CONTRACT TO HIS WIDOW, A ONE-THIRD INTEREST TO OTHER MEMBERS OF HIS FAMILY AND A ONE-THIRD INTEREST TO SAID ASSOCIATION, BUT AS TO THE BEQUEST OF SAID ASSOCIATION HE COUPLED WITH THE SAME A CONDITION THAT THE BEQUEST SHOULD NOT BE OPERATIVE UNLESS THE SAID BURNHAM SHOULD IMMEDIATELY UPON THE DEATH OF SAID HARPER BE ELECTED PRESIDENT OF SAID ASSOCIATION, AND SHOULD REMAIN AS SUCH FOR A PERIOD OF FIVE YEARS. ON THE VERY DAY OF HARPER'S DEATH, SAID BURNHAM CAUSED A MEETING OF THE DIRECTORS OF SAID ASSOCIATION TO BE CALLED AND CAUSED HIMSELF TO BE ELECTED THE PRESIDENT THEREOF.

"Respdts.' Exception No. 60, p. 128. "Disallowed by Sp. Master, p. 141. "Allowed by Hazel, J., p. 171. Complts.' Assgmt. Errors, No 20, p. 269." 134

COMPLAINANTS ARE ADVISED THAT IT IS CLAIMED BY THE SAID BURNHAM THAT IMMEDIATELY THEREON HE EXECUTED TO SAID ASSOCIATION A RELEASE OF ALL THE INTEREST THAT HE (THE SAID BURNHAM) HAD IN THE SAID CONTRACT, BUT COMPLAINANTS CHARGE THAT INSTEAD OF CANCELLING THE SAID CONTRACT, SO FAR AS IT RELATED TO THE ONE-THIRD INTEREST BEQUEATHED TO SAID ASSOCIATION, AND ALLOWING SAID SUM TO GO INTO THE GENERAL TREASURY OF SAID ASSOCIATION, THE PROCEEDS OF THE ONE-THIRD THEREOF 13

"Respdts.' Exception No. 61, p. 128. "Disallowed by Sp. Master, p. 141. "Allowed by Hazel J., p. 171. Complts.' Assgmt. Errors, p. No. 21, p. 270."

56

36 BEQUEATHED SAID ASSOCIATION WAS PLACED IN A SO-CALLED "CONTINGENT FUND," WHICH WAS TO BE PAID OUT IN THE DISCRETION OF THE PRESIDENT, AND FOR WHICH SAID BURNHAM AS PRESIDENT WAS NOT TO BE REQUIRED TO ACCOUNT. THIS ARRANGEMENT WAS CONTINUED UNTIL SOME TIME IN THE YEAR 1898, WHEN SAID SO-CALLED "CONTINGENT FUND" WAS REDUCED TO EITHER $10,000 OR $13,000 PER ANNUM, WHICH AMOUNT WAS STILL TO BE DISBURSED BY THE PRESIDENT AT HIS DISCRETION AND WITHOUT HIS BEING REQUIRED TO ACCOUNT THEREFOR AND WITHOUT ANY CONTROL THEREOF BY THE SAID BOARD OF DIRECTORS.

37 "Respdts.' Exception No. 62, p. 128. "Disallowed by Sp. Master, p. 141. "Allowed by Hazel, J., p. 171. Complts.' Assgmt. Errors, No. 22, p. 270."

THIS METHOD WAS CRITICISED BY THE INSURANCE DEPARTMENT OF THE STATE OF NEW YORK, AND AS A RESULT OF SUCH CRITICISM THE SAID BURNHAM CAUSED THE FOLLOWING RESOLUTIONS TO BE ADOPTED BY THE BOARD OF DIRECTORS OF SAID ASSOCIATION, TO WIT:

"*Resolved*, THAT ALL PAYMENTS HERETOFORE MADE TO THE PRESIDENT FROM THE CONTINGENT FUND ESTABLISHED BY RESOLUTION OF THE BOARD, DATED FEBRUARY 19, 1896, AND THE EXPENDITURE AND DISPOSITION THEREOF BE AND ARE HEREBY IN ALL RESPECTS APPROVED, CONFIRMED AND ADOPTED."

38 "*Resolved*, THAT NO FURTHER PAYMENTS BE MADE FROM SAID CONTINGENT FUND, AND IN LIEU THEREOF THE EXECUTIVE COMMITTEE BE AND IS HEREBY INSTRUCTED TO PLACE UPON THE PAYROLL OF THE ASSOCIATION THE SUM OF $200 WEEKLY, TO BE DRAWN AND RECEIPTED FOR BY THE PRESIDENT, IN ADDITION TO THE SALARY FROM TIME TO TIME FIXED AND ESTABLISHED AND PAID TO HIM, WHICH WEEKLY SUM OF $200 SHALL CONSTITUTE A CONTINGENT FUND TO BE USED AND EXPENDED BY HIM WITHOUT ACCOUNTING THEREFOR, AND IN HIS SOLE DISCRETION AND

TO THAT END, THAT THE SUM, AS WELL AS THE AMOUNT HERETOFORE DRAWN, BE REGARDED AS AN ADDITION TO HIS COMPENSATION."

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THESE COMPLAINANTS CHARGE, UPON INFORMATION AND BELIEF, THAT THERE HAS BEEN PAID OUT OF THE TREASURY OF SAID ASSOCIATION SUMS AGGREGATING MORE THAN $500,000 ON ACCOUNT OF SAID HARPER CONTRACT, AND THAT THE PAYMENT OF THE SAME WAS IN FACT AND IN LAW A MISAPPROPRIATION OF THE FUNDS OF SAID ASSOCIATION IN THAT SAID CONTRACT WAS ILLEGAL AND VOID BECAUSE THE SAID HARPER, WHILE AN OFFICER AND DIRECTOR OF SAID ASSOCIATION, DRAWING A LARGE SALARY FOR HIS SERVICES AS SUCH, COULD NOT LAWFULLY ENTER INTO A CONTRACT TO RECEIVE A COMMISSION ON THE TOTAL AMOUNT OF BUSINESS DONE BY SAID ASSOCIATION DURING HIS INCUMBENCY AS PRESIDENT AND TO CONTINUE AFTER HIS DEATH, AND COMPLAINANTS FURTHER CHARGE THAT EVEN IF SAID CONTRACT SHOULD BE HELD TO BE LEGAL AND ENFORCIBLE AGAINST SAID ASSOCIATION, THAT NEVERTHELESS THE ONE-THIRD INTEREST BEQUEAT... TO SAID ASSOCIATION SHOULD BE FULLY ACCOUNTED FOR BY THE SAID BURNHAM AND THE DIRECTORS OF SAID ASSOCIATION, THE SAME AS ANY OTHER CORPORATE TRUST FUND COMING INTO THEIR HANDS.

"Respdts.' Exception No. 63, p. 129. "Disallowed by Sp. Master, p. 141. "Allowed by Hazel, J., p. 171. Complts.' Assgmt. Errors, No. 23, p. 271."

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141

THAT DURING THE FALL OF 1896 THE SAID BURNHAM ILLEGALLY AND FRAUDULENTLY, AND WITHOUT ANY AUTHORITY OR RIGHT SO TO DO, PAID, OR CAUSED TO BE PAID, TO ONE MOTON D. MOSS (AN EMPLOYEE OF SAID ASSOCIATION, AS HEREINAFTER SET OUT), OUT OF THE FUNDS OF SAID ASSOCIATION, THE SUM OF 1500 POUNDS STERLING OR ABOUT $7,260, WHICH SAID SUM WAS PAID TO SAID MOSS FOR ALLEGED SPECIAL SERVICES RENDERED BY HIM OUTSIDE AND APART FROM THE EMPLOYMENT OF SAID MOSS UNDER HIS CONTRACT OR AGREEMENT WITH SAID ASSOCIATION, AND THAT SAID

"Respdts.' Exception No. 64, p. 129. "Disallowed by Sp. Master, p. 141. "Allowed by Hazel, J., p. 171. Complts.' Assgmt. Errors, No. 24, p. 271."

SUM SO PAID TO THE SAID MOSS WAS PAID WITHOUT WARRANT OR AUTHORITY OF LAW AND THAT NO VOUCHERS WERE FURNISHED THEREFOR BY EITHER THE SAID MOSS OR THE SAID BURNHAM, AND THAT IN FACT, THROUGH THE SAID TRANSACTION, THE SAID SUM WAS WASTED AND FRITTERED AWAY OUT OF THE FUNDS OF THE SAID ASSOCIATION BY THE SAID BURNHAM AND THE OTHER OFFICERS AND DIRECTORS OF THE SAID ASSOCIATION. SAID SUM WAS IN FACT PAID BY SAID BURNHAM TO SAID MOSS IN ORDER TO AVOID THE IMPRISONMENT OF SAID MOSS IN ENGLAND, WHEN THE SAID MOSS AND THE SAID BURNHAM WERE VISITING TOGETHER IN LONDON, OSTENSIBLY "IN THE INTERESTS" OF SAID ASSOCIATION.

"Respdts. Exception No. 65, p. 129. "Disallowed by Sp. Master, p. 141. "Allowed by Hazel, J., p. 171. Compits. Assgmt. Errors, No. 25, p. 271."

THAT SUBSEQUENTLY A CONTRACT BETWEEN THE SAID MOSS AND THE SAID ASSOCIATION, UNDER WHICH THE SAID MOSS HAD BEEN EMPLOYED AS THE AGENT OF SAID ASSOCIATION, WAS CANCELLED, AND THAT AT THE TIME OF THE SAID CANCELLATION OF THE SAID CONTRACT, THE SAID MOSS WAS INDEBTED TO THE SAID ASSOCIATION IN THE SUM OF ABOUT $150,000, AS COMPLAINANTS ARE INFORMED AND BELIEVE, AND THAT AT OR ABOUT THE TIME OF THE SAID CANCELLATION OF THE SAID CONTRACT, THE SAID BURNHAM, AS COMPLAINANTS ARE INFORMED AND BELIEVE, FRAUDULENTLY AND ILLEGALLY, WITHOUT AUTHORITY, RELEASED AND CAUSED TO BE RELEASED TO SAID MOSS THE SAID INDEBTEDNESS OF ABOUT $150,000, THAT THE SAID RELEASE WAS WITHOUT CONSIDERATION AND RESULTED IN A LOSS TO THE ASSOCIATION OF THE SUM OF $150,000, A LARGE PORTION OF WHICH, AS COMPLAINANTS, UPON INFORMATION AND BELIEF, ALLEGE, IT WAS WITHIN THE POWER OF SAID BURNHAM TO HAVE SAVED OR COLLECTED FROM SAID MOSS FOR SAID ASSOCIATION OUT OF THE MONEYS WHICH THE SAID BURNHAM HAD RECEIVED OR HAD IN HIS POSSESSION AND FOR WHICH HE SUBSEQUENTLY, UNDER SOME PRETENDED SETTLEMENT, ACCOUNTED TO SAID MOSS.

THAT IN OR ABOUT THE MONTH OF JANUARY, 1898, THE SAID BURNHAM, ILLEGALLY AND WITHOUT AUTHORITY, CREDITED, OR CAUSED TO BE CREDITED TO THE ACCOUNT OF SAID MOSS WITH THE SAID ASSOCIATION, A LARGE SUM, TO WIT, $93,816.78; THAT, AS COMPLAINANTS ARE INFORMED AND BELIEVE, SAID MOSS WAS NOT ENTITLED TO A CREDIT OF THE SUM NAMED OR TO ANY OTHER SUM FROM THE SAID ASSOCIATION, AS THE SAID BURNHAM THEN WELL KNEW, BUT THAT THE SAID MOSS, ON THE CONTRARY, WAS THEN, AND EVER SINCE HAS BEEN, LARGELY INDEBTED TO SAID ASSOCIATION, AS THE SAID BURNHAM ALSO KNEW; AND COMPLAINANTS, UPON INFORMATION AND BELIEF, CHARGE THAT SUCH CREDIT WAS MADE BY THE SAID BURNHAM, AND THE SAID SUM PAID TO SAID MOSS WITH THE FRAUDULENT PURPOSE ON HIS PART OF DIVERTING AND MISAPPROPRIATING THE FUNDS OF THE SAID ASSOCIATION, AND THAT THE SAID FUNDS WERE SO DIVERTED AND MISAPPROPRIATED, AND THAT SUBSEQUENTLY THE SAID MOSS MADE A CLAIM AGAINST THE SAID BURNHAM WHICH THE SAID BURNHAM IN SOME MANNER COMPROMISED, SETTLED AND ADJUSTED, AND WHEREBY THE SAID BURNHAM PAID TO SAID MOSS, AS COMPLAINANTS ARE INFORMED AND BELIEVE, THE SUM OF ABOUT $46,000, WHICH SUM, UPON INFORMATION AND BELIEF, COMPLAINANTS CHARGE, REPRESENTED ONE-HALF, OR ABOUT ONE-HALF, OF THE SAID SUM OF $93,816.78, AND THESE COMPLAINANTS, UPON LIKE INFORMATION AND BELIEF, CHARGE THAT IT WAS THE PURPOSE OF SAID MOSS AND SAID BURNHAM, AT THE TIME SAID CREDIT WAS GIVEN, AND WHEN SAID SUM WAS PAID TO SAID MOSS, TO FRAUDULENTLY DIVIDE SAID SUM BETWEEN THE SAID MOSS AND THE SAID BURNHAM, AT THE EXPENSE AND TO THE INJURY OF RESPONDENT ASSOCIATION; BUT THAT, BECAUSE OF A FALLING-OUT AND DISAGREEMENT BETWEEN THE SAID MOSS AND THE SAID BURNHAM, THE SAID MOSS, AS THE COMPLAINANTS ARE INFORMED AND BELIEVE,

"Respdts.' Exception No. 66, p. 129. "Disallowed by Sp. Master, p. 141. "Allowed by Hazel, J., p. 171. Compits. Assgmt. Errors, No. 26, p. 272"

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TOOK ADVANTAGE OF THE SITUATION IN WHICH SAID BURNHAM WAS PLACED TO COMPEL HIM TO MAKE REPAYMENT OF SAID ONE-HALF OF SAID SUM SO THAT THE SAID MOSS IN FACT BECAME THE BENEFICIARY OF THE FULL AMOUNT THEREOF.

"Respdts.' Exception No. 67, p. 130. "Disallowed by Sp. Master, p. 141. "Allowed by Hazel, J., p. 171. "Complts.' Assgmt. Errors, No. 27, p. 972."

COMPLAINANTS FURTHER CHARGE, UPON INFORMATION AND BELIEF, THAT BY THE CONTRACT ENTERED INTO BETWEEN THE SAID MOSS AND THE SAID ASSOCIATION IN OR ABOUT THE MONTH OF JANUARY, 1897, IT WAS PROVIDED THAT SAID ASSOCIATION SHOULD ADVANCE TO SAID MOSS $3,500 A WEEK IN ORDER THAT THE LATTER MIGHT MAKE ADVANCES TO AGENTS, AND THAT THIS MONEY WAS TO BE CHARGED TO SAID MOSS AND ACCOUNTED FOR BY HIM TO THE ASSOCIATION WITH PROPER VOUCHERS, AND THAT SAID MOSS SHOULD BE LIABLE FOR THE SUMS SO ADVANCED; THAT SAID $3,500 WAS ADVANCED TO SAID MOSS WEEKLY, UNDER SAID CONTRACT, BUT THAT THE SAID MONEY WAS NOT ACCOUNTED FOR, NOR WERE VOUCHERS PROVIDED FOR IT, AND UPON RECEIPT OF REPORTS OF ADVANCES TO AGENTS THE ACCOUNT OF SAID MOSS WAS CREDITED WITH THE AMOUNTS SO REPORTED, AND HE WAS, AS FAR AS SAID BURNHAM COULD ACCOMPLISH THAT RESULT, AND BY THE ORDERS AND ACTS OF SAID BURNHAM, RELEASED FROM HIS LIABILITY FOR SUCH AMOUNTS. THAT SAID BURNHAM SO PERMITTED OR DIRECTED THE VIOLATION OF SAID CONTRACT WITH THE FRAUDULENT AND ILLEGAL PURPOSE ON HIS PART OF PLACING LARGE SUMS OF MONEY IN THE HANDS OF THE SAID MOSS TO BE DIVIDED AND SHARED BETWEEN THE SAID MOSS AND SAID BURNHAM IN FRAUD OF RESPONDENT ASSOCIATION, AND THAT BY REASON OF THE VIOLATION OF THE SAID CONTRACT AND ILLEGAL AND FRAUDULENT PRACTICES OF THE SAID BURNHAM AND THE SAID MOSS, LARGE SUMS OF MONEY, TO WIT, ABOUT THE SUM OF $158,000 OF THE FUNDS OF THE ASSOCIATION, WERE MISAPPROPRIATED AND SQUANDERED DURING THE YEARS 1897 AND 1898, AND THAT

A LARGE PART THEREOF WAS FRAUDULENTLY AND ILLEGALLY APPROPRIATED AND CONVERTED TO THEIR OWN USES BY THE SAID BURNHAM AND THE SAID MOSS, AS COMPLAINANTS CHARGE UPON INFORMATION AND BELIEF.

THE SAID BURNHAM KEPT IN HIS PRIVATE POSSESSION AS HIS PRIVATE PROPERTY ALL THE CONTRACTS WITH THE SAID MOSS, AND HAS REFUSED PERMISSION AT DIVERS AND SUNDRY TIMES TO CERTAIN OF THE ACCOUNTANTS AND OFFICERS OF THE SAID ASSOCIATION, ENTITLED TO SEE AND EXAMINE SAID CONTRACT, THE RIGHT OF INSPECTION OR EXAMINATION OF SAID CONTRACTS, AND THAT THESE AND SIMILAR PRACTICES, AS COMPLAINANTS ARE INFORMED AND BELIEVE, HAVE CONTINUALLY PREVAILED AND STILL PREVAIL IN THE ADMINISTRATION OF THE BUSINESS OF RESPONDENT ASSOCIATION OR OF RESPONDENT COMPANY UNDER THE PRESIDENCY AND MANAGEMENT OF THE SAID BURNHAM.

"Respdts.' Exception No. 68, p. 130. "Disallowed by Sp. Master, p. 141. "Allowed by Hazel, J., p. 171. "Complts.' Assgmt. Errors, No. 28, p. 273."

AFTERWARD, SAID MOSS WAS MADE "MANAGER OF THE AGENCY DEPARTMENT" FOR SAID ASSOCIATION BY SAID BURNHAM, AND BY SAID BURNHAM'S DIRECTION WAS PAID THE SUM OF ABOUT $15,000 (IN ADDITION TO A SALARY AT THE RATE OF $15,000 PER ANNUM AND COMMISSIONS AS ABOVE STATED) FOR SECURING OLD POLICYHOLDERS OF SAID ASSOCIATION TO TRANSFER THEIR POLICIES OF THE "FIFTEEN YEAR CLASS" INTO NEW POLICIES OF THE "FIVE YEAR CLASS."

"Respdts.' Exception No. 69, p. 130. "Disallowed by Sp. Master, p. 141. "Allowed by Hazel, J., p. 171. "Complts.' Assgmt. Errors, No. 29, p. 273."

THAT IN OR ABOUT THE YEARS 1896 AND 1897, AND AT VARIOUS TIMES DURING SAID YEARS, AS COMPLAINANTS ALLEGE, UPON INFORMATION AND BELIEF, THE SAID BURNHAM CONSPIRED WITH THE SAID MOSS AND OTHERS FOR THE PURPOSE OF DEFRAUDING THE MORTUARY FUND OF SAID ASSOCIATION, AND IN PURSUANCE OF SAID CONSPIRACY THEY TOOK FROM SAID FUND AND USED FOR THEIR OWN PRIVATE BENEFIT AND PURPOSES A LARGE SUM OF MONEY, TO WIT, ABOUT

"Respdts.' Exception No. 70, p. 130. "Disallowed by Sp. Master, p. 141. "Allowed by Hazel, J., p. 171. "Complts.' Assgmt. Errors, No. 30, p. 273."

54 THE SUM OF $300,000, IN THE MANNER FOLLOWING, TO WIT:

DURING THE YEARS NAMED ABOUT TWENTY-FIVE MILLION DOLLARS OF INSURANCE, UNDER A PLAN KNOWN AS THE FIFTEEN-YEAR PLAN, WAS TRANSFERRED TO WHAT IS KNOWN AS THE FIVE-YEAR PLAN, MOTON D. MOSS, NOT BEING ENTITLED TO ANY COMMISSION ON THE BUSINESS SO TRANSFERRED; BUT BY THE EXPRESS ORDER AND DIRECTION OF THE SAID BURNHAM, WITHOUT ANY AUTHORITY WHATEVER, SAID MOSS WAS ALLOWED COMMISSIONS ON SUCH TRANSFERRED BUSINESS (AS ABOVE STATED), AND SAID BURNHAM, BY HIS EXPRESS ORDER

55 AND DIRECTION, ALSO ALLOWED AND CAUSED TO BE PAID OUT OF THE FUNDS OF THE SAID ASSOCIATION TO AGENTS OF SAID ASSOCIATION WHO HELPED TO EFFECT THE SAID TRANSFER, THE AMOUNT OF THE LAST MORTUARY CALL ALREADY PAID IN ON ACCOUNT OF THE BUSINESS SO TRANSFERRED.

THE SAID PAYMENTS TO THE SAID MOSS AND TO THE OTHER AGENTS OF THE COMPANY WERE MADE ILLEGALLY AND FRAUDULENTLY AND CONTRARY TO THE CONSTITUTION AND BY-LAWS OF THE ASSOCIATION, AND THAT THEREBY THE MORTUARY FUND OF SAID ASSOCIATION WAS DEPLETED AND EXHAUSTED SO THAT JUST AND VALID CLAIMS AGAINST SUCH ASSOCIATION

56 COULD NOT BE, AND WERE NOT PAID AT MATURITY, AND THE FAMILY AND ASSIGNS OF DECEASED MEMBERS HAVE, BECAUSE OF THE CORRUPT AND ILLEGAL ACTS DESCRIBED, BEEN UNABLE TO COLLECT THE CLAIMS DUE THEM.

"Respdts.' Exception No. 71, p. 130. "Disallowed by Sp. Master, p. 141. "Allowed by Hazel, J., p. 171. Complts.' Assgmt. Errors, No. 81, p. 274."

THAT SOME TIME IN THE YEAR 1899, OR PRIOR THERETO, THE SAID BURNHAM, PRESIDENT OF SAID ASSOCIATION, AND THE OTHER OFFICERS AND DIRECTORS OF RESPONDENT ASSOCIATION, ILLEGALLY AND FRAUDULENTLY, AND WITHOUT RIGHT OR AUTHORITY, AS THESE COMPLAINANTS ARE INFORMED AND BELIEVE, DIRECTED J. S. HOFFECKER, THE THEN AUDITOR OF

SAID ASSOCIATION, TO ALLOW AGAINST AND CREDIT UPON A GOOD, VALID AND COLLECTIBLE DEBT OF $8,000 TO SAID ASSOCIATION FROM ONE HALSEY, OF BALTIMORE, A DEBT OF $3,000 DUE FROM MOTON D. MOSS, AT SAID TIME THE GENERAL MANAGER OR THE GENERAL AGENT OF SAID ASSOCIATION, TO SAID HALSEY, WHICH SAID LAST NAMED DEBT WAS OF LITTLE OR NO VALUE, AND WAS NEVER PAID, THE SAID MOSS BEING THEN HOPELESSLY IN DEBT TO THE SAID ASSOCIATION AND KNOWN TO BE SO BY THE SAID BURNHAM. THAT SAID HOFFECKER REFUSED TO CARRY OUT THE SAID DIRECTION OF THE SAID BURNHAM, AND SHORTLY THEREAFTER THE SAID BURNHAM CAUSED HIS CONFIDENTIAL BOOKKEEPER, ONE WILLIAM PORTER, TO PREPARE, OR HAVE PREPARED, AN ACCOUNT OF THE SAID ASSOCIATION AGAINST SAID HALSEY, WHICH SAID ACCOUNT CREDITED AND ALLOWED TO SAID HALSEY THE SAID SUM OF $3,000, WHICH SUM WAS THEREBY LOST TO THE SAID ASSOCIATION. 157 158

That by reason of these facts, as complainants charge upon information and belief, the said Association was rendered and became insolvent as early as the year 1898, and has remained insolvent and unable to meet its obligation to its members and policy-holders from said date up to the present time, and that neither it nor the said respondent Company has been at any time since the year 1898, nor is it now, in position to meet and pay death claims and the claims of policy-holders, nor has it sufficient resources and assets with which to carry out its contractual obligations with the complainants and the other members of respondent Association and of respondent Company, but, on the contrary, said respondent Association since 1898 and up to the time of the abandonment by it of its corporate business and the conversion of its properties by the respondent, the Mutual Reserve Life Insurance Company, was wholly unable to carry out 159

and attain the corporate objects, and the respondent the Mutual Reserve Life Insurance Company is in like manner and for like reasons and causes, and has been ever since its incorporation and organization, insolvent, incapable of carrying out its contracts with its corporate business in fraud of said Association and of the members of said Association, including these complainants.

"Respdts.' Exception No. 73, p. 131. "Disallowed by Sp. Master, p. 141. "Allowed by Hazel, J., p. 171. Complts.' Assgmt. Errors, No. 32, p. 274."

THAT, AS COMPLAINANTS ARE INFORMED AND BELIEVE, AND UPON SUCH INFORMATION AND BELIEF ALLEGE, THE SAID BURNHAM, WHILE DRAWING A SALARY OF $26,000 AS PRESIDENT OF SAID ASSOCIATION, CAUSED HIS NAME TO BE PUT ON THE PAY-ROLL OF SAID ASSOCIATION FOR A LARGE SUM OF MONEY WEEKLY, WHICH SAID SUM HE DREW IN ADDITION TO THE SAID SALARY OF $26,000 PER ANNUM, AND THAT HE CAUSED THE SAID SUM TO BE VOTED TO HIM BY THE BOARD OF DIRECTORS OF SAID ASSOCIATION ON THE PRETENSE THAT HE DESIRED TO USE IT FOR THE GOOD OF THE ASSOCIATION, BUT THAT AS A MATTER OF FACT, AS COMPLAINANTS ALLEGE, UPON INFORMATION AND BELIEF, THE SAID BURNHAM ILLEGALLY AND FRAUDULENTY CONVERTED AND APPROPRIATED SAID SUM TO HIS OWN USE.

"Respdts.' Exception No. 74, p. 131. "Disallowed by Sp. Master, p. 141. "Allowed by Hazel, J., p. 171 Complts.' Assgmt. Errors, No. 33, p. 275."

THAT SAID BURNHAM AND HIS ASSOCIATE DIRECTORS AND OFFICERS IN SAID COMPANY AND IN SAID ASSOCIATION ARE STILL PURSUING IN THE MANAGEMENT AND CONTROL OF SAID COMPANY, AND THROUGH IT, OF THE PROPERTIES OF SAID ASSOCIATION, THE SAME CORRUPT, FRAUDULENT AND ILLEGAL PRACTICES WHICH THEY PURSUED TOWARD SAID ASSOCIATION AND ITS PROPERTIES AS AFORESAID, DURING THE YEARS FROM 1896 UP TO THE TIME OF THE ORGANIZATION AND INCORPORATION OF RESPONDENT COMPANY, and that complainants, as members of said Association, are unable to obtain any relief through corporate action because the said Burnham has under his influence and control all of the other directors of

said Association and of the said Company. *That said Burnham and the said directors claim and maintain that the said Association has ceased to exist, and that no further meetings of either the members or directors of said Association are held or called, and that all of the business is being transacted by the said Burnham and the said officers and directors as officers and directors of said Company only, and that complainants and other members of respondent Association who have not consented to the incorporation of said Company and the transfer to it of the properties and assets of respondent Association are denied all relief through corporate action, and can only obtain relief and protection through application to a court of equity, they being wholly remediless at law in the premises.*

"Respdts.' Exception No. 76, p. 132. "Allowed by Sp. Master, p. 141. "Complts.' Exception No. 30, p. 149." 163 164

XVIII.

Complainants further say that had respondent Association continued a going concern and remained in the transaction of the business for which it was organized, and been solvent, it would have been authorized and entitled to call upon, receive and collect from its members and policyholders generally and from complainants severally, premiums to be paid by the complainants and its other members and policyholders to it under its Certificate of Incorporation and By-Laws and the Laws of New York upon July 2nd, 1902, to wit: upon the date of the filing of complainants' original bill in this cause, *but that it would not have been and is not entitled to demand or collect any other or different sums from the complainants and its other members and policyholders than those required to be paid under the policies issued by it to complainants and its other members and policyholders generally, pursuant to its Certificate of Incorporation and amended Certificate of Incorporation, ("Ex-*

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"Respdts.' Exception No. 77, p. 132. "Allowed by Sp. Master, p. 141. "Complts.' Exception No. 31, p. 150."

166 *hibits Nos. 1 and 2" to this bill), and pursuant to the laws of the State of New York in force and effect and binding upon said Association, its members and policyholders at the times when the obligations and rights of membership were severally acquired by the complainants and the other members and policyholders of respondent Association. But complainants say that by reason of the insolvency of respondent Association, its abandonment of the business for which it was incorporated, and its attempted unlawful, fraudulent and invalid re-incorporation as the Mutual Reserve Life Insurance Company, respondent Association has*

"Respdts.' Exception No. 78, p. 132. "Allowed by Sp. Master, p. 141. "Complts.' Exception No. 32, p. 150."

167 *ceased to have any legal right to demand, receive or collect premiums or calls from complainants and its members and policyholders generally,*

"Respdts.' Exception No. 79, p. 132. "Allowed by Sp. Master, p. 141. "Complts.' Exception No. 33, p. 150."

And that therefore complainants and the other members and policyholders of respondent Association in like situation are relieved from the obligation to pay or tender such calls or premiums to respondent Association on or before the date of the filing of complainants' original bill in this cause, to wit: July 2nd, 1902, and have become entitled as members and policyholders in a purely mutual corporation, which has become insolvent and ceased to transact

168 *the business for which it was organized, and become unable to attain and effectuate the corporate objects, to have the corporate property sequestered and administered upon by this Honorable Court as a Court of Chancery.* Complainants further say in this connection that respondent Association had not notified them of any assessment, call, or maturing premium due to it upon July 2, 1902, the date of the filing of their said original bill, or any other date, but that the only claim or pretended claim against them for premium, call or payment of assessment upon their policies at the time of the filing of their original bill in this cause is one made by

respondent Company under date of June 2nd, 1902, said call for the payment of a premium or assessment being made upon complainants and other members or policyholders of respondent Association through the circular notice hereinbefore mentioned and exhibited as Exhibit No. 4 to this amended bill and to complainants' original bill and to said Exhibit reference is again made. 169

Complainants, upon advice of counsel, deny that respondent Company has any right to call upon them for the payment of premiums or assessments under and by reason of their relations to respondent Association as members and policyholders in said Association, but should this Honorable Court for any reason hold, find and adjudge that complainants or any of them are required upon the facts to make payment of premiums or calls to either the respondent Association or the respondent Company upon July 2, 1902, or at any subsequent intervening date, then complainants aver their readiness and willingness to make such payments, but pending such adjudication and determination of their obligations and liabilities, they deny their liability to respondent Company upon premiums and assessments that might have been due or might have been called for and collected by respondent Association, and they ask that their rights and equities in the premises be preserved by the orders of this Honorable Court, and have tendered into Court at the time of the filing of their original bill, to wit: on July 2, 1902, subject to the final adjudication and determination of the rights of the respondent Company to call for and receive payment of such premiums and assessments, the sums which have been called for by the respondent Company as against complainants as members and policyholders in said Association under the Laws of New York, the certificate of incorporation of the 170 171

172 respondent Association, and the by-laws, rules and regulations thereof. The amounts called for by said Association or by said Company from these complainants and claimed to be due from the several complainants on the date of the filing of complainants' original bill (July 2nd, 1902) and tendered and paid into the registry of this Court by the complainants, respectively, at that time are the amounts set opposite their several names as follows, to wit:

Simeon Marsh	$69.90
Max Boshwitz	81.10
William J. Moody	15.30
173 James N. Howard	11.00
James L. Long	32.40
Frank B. Hamilton	30.15
Thomas J. Deupree	48.99
Edward C. Pool	24.84
Thomas Polk	29.70
David L. Snodgrass	53.70

No assessments have been made upon or called from the other complainants as being due and payable upon said date.

Complainants James L. Long, and Frank B. Hamilton, holders of policies Nos. 102,851 and 72,-199 in respondent Mutual Reserve Fund Life Asso-
174 ciation, wherein, under a pretended call, No. 122, herein referred to, there were claimed to be due assessments to the amount of $32.40 on the policy held by complainant Long, and $30.15 on the policy held by complainant Hamilton, did, on July 2nd, 1902, and before noon of said day, tender to the said Association the said amounts under and according to the terms of a letter addressed to said Association by counsel of said complainants, a copy of which letter is hereto attached as *Exhibit No. 9,* said tender being made by the agents and attorneys of said complainants for and in their behalf. Upon

the presentation of said letter and the tender of 175
said amounts in legal tender money of the United States at the place of business or former place of business of said Association and to the officers and agents of said Association at said place of business, said officers and agents after consultation with counsel, pretended to accept the said tender and receive the money and made out receipts therefor, which receipts were by them handed to the agent and attorney of said complainants. The receipts so made out and offered were in the name and signed in behalf of respondent Mutual Reserve Life Insurance Company, and not in the name or in behalf of respondent Association. Thereupon said 176
complainants, through their agents and attorneys, refused to accept said receipts or to recognize the right of the Mutual Reserve Life Insurance Company to receive the money so tendered to the Mutual Reserve Fund Life Association and demanded that the same be accepted and received by the said Association and receipted for it by it and in its name, said tender and said demand being made at what heretofore was the office and regular place of business of said Association and to the officers, agents and servants who had heretofore been conducting the business of said Association as its officers, agents and servants who had heretofore been con- 177
ducting the business of said Association as its officers, agents and servants. Said tender was, at said place and by said persons refused, upon the ground that the said Association was no longer in existence, had no office or place of business, and that said persons to whom the tender was made were not officers, agents and servants of said Association, but of said Company, and that said Company was alone occupying said offices and place of business formerly occupied by said Association, said Association having ceased to exist. Among other

178 grounds for refusing said tender, it was claimed by the said persons at the said place and time that the said Association no longer had any legal existence, had ceased its corporate existence, and that the assets, business and properties formerly belonging to said Association were now in possession and charge of said Company, and that it alone was authorized and entitled to receive said money and receipt therefor, which right and authority said ocmplainants, by their agents and attorneys denied and still deny. Said complainants thereupon (and on July 2nd, 1902, at the time of the filing of their said original bill in this cause) paid into court the
179 amount of said tender, subject to the adjudication and deermination of this Court as to their obligation to pay the same to any other person or corporation than the respondent Mutual Reserve Fund Life Association, and as to said Association they reaffirm the allegations of said original bill and this amended bill that it has ceased to be a going concern to carry on and transact the business for which it was organized and incorporated, and that all of its properties and assets are a trust fund for the use and benefit of its members, policyholders and creditors as their several interests may appear.

In this connection, complainants further say, that in so far as they have been notified by said
180 respondents, or either of them, since the filing of their original bill in this cause, of any further calls for premiums or assessments (although still denying the legality and validity of such assessments or calls) they have nevertheless tendered and paid the several amounts thereof into the registry of this Court (in the manner herein and in said original bill set out) subject to the adjudication and determination of this Court as to their obligation to pay the same.

In this connection, complainants deny that they

or any of them are liable for said premiums or assessments to respondent Company, and they deny that upon the facts aforesaid they are liable for said premiums to the respondent Association because said Association is insolvent and has ceased to be a going concern and to transact the business for which it was organized, and because the several amounts heretofore tendered are in excess of what the said Association is properly entitled to collect from each of the complainants. 181

XIX.

As to many of the charges in this bill contained as to the frauds, deceits, and misrepresentations made by respondent Association, its officers and directors, to complainants and the other members and policyholders thereof, complainants refer to pages 3 and 4 of the 41st annual report of the Superintendent of Insurance of the State of New York, for the year 1900, and to that part of said report which relates to the official examination of the Mutual Reserve Fund Life Association, one of the respondents, as the same appears upon pages 257 to 278, inclusive, of said volume of said report. And complainants quote from said report as bearing upon said allegations of fraudulent and deceitful practices and misrepresentations, the following language: 182

"Respdts.' Exception No. 80, p. 132. "Allowed by Sp. Master, p. 141. "Complts.' Exception No. 84, p. 150."

"It is quite apparent to me that the executive management of the Association had a reason for treating bond statements as they have since the time of the last examination. The persistent members holding these statements have just had their premium or assessment rates raised to attained age. To placate them and appease their dissatisfaction, incident to this increase in rates the Association abandoned the ground it had previously maintained so strongly in protesting that these bond statements 183

184 *were not a liability thus evidencing on the part of the management an intention to deceive the policyholders as to the true financial condition, continuing the deception which had existed ever since the first bond statement was issued by the Association, and disregarding the criticism heretofore made by this department as to their issue. That disatisfaction among its members exists is manifest from the increased litigation occurring contemporaneously with the increase in rates. I make mention of this as it seems to establish the fact that the widespread impression obtained among the members of the Association that their rates would not be raised.*

185 *The causes responsible for this impression were numerous. One contributing cause has been a failure on the part of the Association to state conspicuously in its policies that the right was reserved to increase rates at any time when necessary."*

"Respdts.' Exception No. 81, p. 133. "Allowed by Sp. Master, p. 141. "Complts.' Exception No. 35, p. 151."

And complainants say that the managing officers of said Association and of said Company are the same now as they were at the time of the aforesaid report made by the Hon. Lewis F. Payne, then Superintendent of Insurance of the State of New York, and that the directors, or a majority of them, are the same persons now as then.

"Respdts.' Exception No. 82, p. 133. "Allowed by Sp. Master, p. 141. "Complts.' Exception No. 36, p. 151"

186 *In this connection, complainants further charge that respondent Association and respondent Company now have numerous suits pending against them in the State of New York, and in other States, begun and instituted by members and policyholders, and that they are threatened with a multiplicity of similar suits, and that by such suits the properties and assets of respondent Association and of respondent Company will be greatly impaired if not wholly frittered away, and that complainants and the other members and policyholders of respondent Association upon the facts aforesaid are without adequate remedy at law, and that their*

only remedy is in a Court of Equity wherein there 187
can be a marshalling of the assets of respondent Association, and a determination and adjudication of the rights of complainants and all other members and policyholders of respondent Association as between themselves, and a sequestration and sale of the properties and assets of respondent Association, and a distribution of the proceeds thereof among the parties entitled thereto as their interests may severally be made to appear.

Complainants further say that they cannot obtain remedies or relief by corporate action as members of said Association, because the said officers and directors declare that said Association is no 188
longer in existence and refuse to call or hold or permit the holding of corporate meetings of said Association, and it is useless and would be unavailing to invoke action by the President and Directors of said Association because they and each and all of them were and are parties to the conspiracy to wreck and defraud respondent Association and convert its assets and discriminate against and defraud complainants and the other members of respondent Association as elsewhere herein more fully stated.

Premises considered, complainants pray:

1. That to the end that complainants may obtain the relief to which they are justly entitled, the Court grant due process by subpœna (if process is 189
required by the rules of this Honorable Court upon the filing of an amended bill) directed to said Mutual Reserve Fund Life Association of New York, and to said Mutual Reserve Life Insurance Company, respondents herein, requiring and commanding them and each of them to appear herein and answer, but not under oath, their oaths being expressly waived, the several allegations in complainants' amended bill contained; or that proper notice be given them of the filing of this amended bill.

190 2. That upon the hearing a receiver be appointed for respondent Association, its properties and assets, and for respondent Company, and the properties and assets in its possession, and which it claims to have taken over from respondent Association, and that such receiver have full power conferred upon him to enter into, take possession of, hold, and conserve, subject to the further orders and directions of this Court in the premises, all the assets, properties, property rights, interests and equities of respondent Association and respondent Company, wherever found or situated, and that as to all choses in action and rights of action of respond-
191 ent Association or respondent Company against any person whatsoever, and particularly as against the directors and officers thereof, that the title thereof be vested in such receiver by the orders of this Honorable Court, in such manner as may be deemed necessary and proper, and that such receiver have power to hold, manage and control said properties, and be given all such powers and authority as may be requisite to preserve said properties until the sale or other disposition thereof as the same may be decreed and ordered by this Honorable Court; and to receive the earnings and income thereof to the use and benefit of respondent
192 Association and respondent Company as their interests may severally appear and that such other powers and authority as are usually vested in receivers in like cases, be given to such receiver.

3. That such receiver immediately upon his appointment and qualification shall be ordered and directed to take possession of all properties, equities, rights and interests of respondent Company as aforesaid, and to reduce to possession all choses in action of the respondents, and that he be given full rights, power and authority, to bring and defend suits for and in behalf of the respondents,

and each of them and to enter his appearance through his counsel in all suits in equity, or actions at law, now pending or hereafter brought to which respondent Association or respondent Company is a party, or in which either said Association or said Company is interested, and that said receiver be authorized to bring and defend suits or actions therein either in his own name or in the name of the respondent Association or respondent Company, or both, as he may be advised by counsel is necessary, and that he be especially empowered and authorized to gather in and take possession of all the assets and properties rights, and choses in action of respondent Association and respondent Company in whatever State or jurisdiction the same may be situate, and to bring and defend suits or actions in other jurisdictions or States in his own name and for the use and benefit and protection of the interests of respondent Association and respondent Company, and their members and policyholders generally.

4. That an accounting be had as between complainants and all other members and policyholders in respondent Association and respondent Company, in order that the true interests of the complainants and all other members and policyholders in respondent Association, and in the properties and assets thereof may be ascertained and determined, and that for this purpose an Examiner or Special Master be appointed by this Honorable Court with full power and authority to call for, examine and inspect the books, papers, records and accounts of the respondent Association and of respondent Company, and to call and examine witnesses and take testimony to such extent as may be necessary to enable such Examiner or Special Master to report to this Honorable Court the present condition of said respondent Association and of re-

196 spondent Company respectively, and the rights and interests therein of your complainants and all others who may become complainants with them under this bill or intervene in this suit and of all the members and policyholders in the respondent Association of whatever class or character, whose rights, claims and interests it may be necessary to adjudicate and determine in this suit.

5. That the assets of respondent Association and respondent Company, after the same shall have been taken into the possession of the Receiver under the orders of this Court, be marshalled, sold or disposed of, according to the equities of the several
197 parties in interest, and that the assets and properties of respondent Association and respondent Company be sold and disposed of and the proceeds applied and distributed to complainants and to the other members and policyholders of respondent Association, and of respondent Company, after the payment of all bona fide creditors of respondent Association or respondent Company, such distribution to be to complainants and the other members and policyholders of respondent Association or respondent Company as their several interests may be made to appear; the costs and expenses of this suit (including a reasonable allowance to complain-
198 ants' solicitors), and of the receivership incident thereto, being first paid and discharged.

6. That upon an accounting between your complainants and the respondents, your complainants have a decree against the respondents and each of them, for such sum as upon an accounting may be found to be due to your complainants upon account of their several policies and of their membership rights and interests in the respondent Association, and that like relief be afforded to all other members or policyholders of respondent Association or respondent Company who join in this amended bill or

come in under the original or this amended bill by 199
petition of intervention or otherwise.

7. That respondent Association, and more particularly respondent Company, and the officers and directors and agents of each of said respondents and all other persons claiming or pretending to claim under these respondents, or either of them, may be restrained by injunction of this Honorable Court from interfering with, selling, disposing of, or transferring any of the properties, property rights, or assets of respondent Association or respondent Company, or any part or parts thereof, or any earnings or proceeds thereof, and that a temporary restraining order issue at such time in the 200
progress of this cause as to the Court may seem proper, temporarily restraining any transfer or alienation of the properties and assets of the respondent Association or of the respondent Company by the respondents or either of them, and that upon the final hearing, a permanent injunction forbidding such transfer or alienation be entered.

8. That all the present members and policyholders of respondent Association be required to prosecute their claims and demands against said respondents in this Court, and in this cause, and to that end that they be allowed to file their petitions, in term or in vacation, exhibit their respective 201
claims and demands, and prove same before a master in chancery, or before one of the standing masters to be designated by this Honorable Court, and that they and each of them be granted all the benefits of this proceeding to which the complainants may be entitled, and that the Court order a proper publication or notice to notify all members and policyholders to file their claims in this cause, and that such order extend to the creditors of respondent Association and of respondent Company, if any such there are to be found, and particularly to those persons who as personal representatives of

202 beneficiaries under the policies as issued by respondent Association to its members, are entitled to make claims or to recover against the respondent Association by reason of the death of members of said Association holding policies of insurance therein.

9. That a writ of injunction issue out of this Honorable Court against the several members and policyholders in respondent Association and in respondent Company, no matter what their status or claims may be, enjoining and restraining them from beginning or prosecuting any separate suit or suits against the respondent Association or the re-
203 spondent Company upon any claim or claims whatsoever, and that they and each of them be required to prosecute their several claims and demands in this proceeding only; that if, before the issuance of said writ of injunction, any suit shall have been instituted by any member or members, policyholder or policyholders, against said respondent Association or said respondent Company, that the proceedings therein shall be prosecuted no further than judgment, and that no execution shall be enforced upon any judgment now or hereafter obtained in such suits against respondent Association or respondent Company, but that the preference and priority of such members or policyholders shall be
204 determined in this cause upon their proper intervention herein upon such judgments or decrees.

10. That upon the qualification of a receiver for respondent Association or respondent Company, as hereinbefore prayed, such receiver be authorized to enter into immediate possession of the business, offices, and place of business of respondeint Association and respondent Company, and to take possession of its records, books, papers, accounts and properties of every kind; that at the proper time in the progress of this cause, said receiver be em-

powered and directed to convert all the properties, property rights, and choses in action of respondents into money, and be given power and authority to do all other acts necessary to protect he assets of respondent Association and of respondent Company and to conserve and protect the interests of the complainants and of all other members and policyholders and creditors of respondents, and each of them, and be empowered to bring and institute any suits or actions that he may be advised by counsel or directed by the orders of this Court to bring against the officers and directors of respondent or any of them, to recover from such officers and directors any moneys which any of said officers or directors may have received by way of secret profits, illegal compensation or commissions as against the rights of the respondent Association or Company, and to recover from said officers and directors any moneys improperly and unlawfully paid out by them from the moneys and funds of respondent Association, or as the result of their unlawful conversion and transfer of the properties and assets of respondent Association and respondent Company. 205 206

11. That upon the appointment of a Special Master as hereinbefore prayed, such Master be directed to take and state an account showing:

(*a*) The amount and present value of the assets of respondent Association and of respondent Company. 207

(*b*) The names of the members and policyholders of respondent Association and of respondent Company, and the specific status, financial and otherwise, of their several policies and membership claims.

(*c*) The *pro rata* share of the several members and policyholders in the funds subject to distribution among the several members, policyholders and

creditors, as the result of the disposition of the corporate assets.

(*d*) The *pro rata* interest of each policyholder in the assets of the respondent Association and the respondent Company, and the liabilities of such policyholders to respondent Association or respondent Company, upon account of their membership contracts with said Association or said Company.

12. The claims and demands of all persons asserting themselves to be creditors of the respondent Company, with a full statement of the nature, kind and character of the obligations of respondent Association or respondent Company, evidencing such indebtedness, if any.

And finally complainants pray that they may have such other, further and general relief in the premises as the nature of the case may require, and to this Honorable Court may seem meet; and complainants, as in duty bound, will ever pray.

RUSSELL & WINSLOW,
Solicitors for Complainants,
253 Broadway,
Borough of Manhattan, New York City, N. Y.

D. L. SNODGRASS,
CARUTHERS EWING,
R. F. JACKSON,
WM. HEPBURN RUSSELL,
WM. BEVERLY WINSLOW,
Of Counsel.

COUNTY OF NEW YORK, }
State of New York, } ss.:

David L. Snodgrass, being duly sworn, on his oath states: That he is one of the complainants in the above-entitled suit; that he has read the fore-

going bill and knows the contents thereof, and that 211
the matters and things therein stated are true, except those matters stated to be alleged upon information and belief or upon advice of counsel, and that as to these matters he believes it to be true; and that in regard to all matters and things in the foregoing bill alleged which are not within the personal knowledge of this deponent, the deponent has been fully informed and believes that the same are true.

DAVID L. SNODGRASS.

Subscribed and sworn to before me
this 26th day of January, 1903. } 212
JULIA AKERS WILSON,
Notary Public,
Kings County.
Certificate filed in New York County.

Exhibt No. 1.

CERTIFICATE OF INCORPORATION OF THE MUTUAL RESERVE FUND LIFE ASSOCIATION OF NEW YORK.

Know all men by these presents, that we the undersigned being persons of full age, and citizens of 213
the United States of America, and a majority of whom are also citizens of the State of New York, desiring to form ourselves into a society, association or corporation, under the laws of the State of New York, pursuant to the provisions of Chapter 267 of the laws of 1875, passed May 12, 1875, entitled "An Act for the incorporation of societies and clubs for certain lawful purposes" and the acts amendatory thereto, and so form ourselves into such society for the benefits, purposes and otherwise as hereinafter set forth.

214 DO HEREBY CERTIFY.

FIRST.—That the name or title at law by which such society shall be known is the "Mutual Reserve Fund Life Association of New York."

SECOND.—That the particular business and object of such society is the mutual benefit of ourselves, and all others who may become members of the society by providing benefits for families and others dependent upon such members by means of voluntary contributions to meet exigencies occurring from time to time and to provide a fund for the common and exclusive benefit of all members.

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THIRD.—That the number of trustees to manage such society shall be five and the names of such trustees for the first year are as follows:

B. G. BLOSS,
J. HENRY DURLAND,
EDWARD H. STEPHENSON,
J. W. RIDGEWAY,
I. M. HOLCOMB.

FOURTH.—That the principal office of such society shall be located in the City of New York in said State of New York.

216 In testimony whereof we have hereunto subscribed our names at said City of New York this 7th day of January, A. D. 1881.

B. C. BLOSS,
A. C. HUNT,
N. W. BLOSS,
J. HENRY DURLAND,
I. M. HOLCOMB.

STATE OF NEW YORK,
City and County of New York, } ss.: 217

On this 7th day of January, 1881, before me personally came B. C. Bloss, A. C. Hunt, N. W. Bloss, J. Henry Durland and I. M. Holcomb to me known to be the individuals described and who executed the within instrument and who each acknowledged that he executed the same for the purposes therein mentioned.

JACOB DU BOIS,
Notary Public,
New York County.

I approve of the within certificate of incorporation and consent that it be filed, Jan. 12th, 1881. 218

C. DONOHUE,
Justice of the Supreme Court,
for the First Judicial District.

Filed 13th Jan., 1881.

M. J. D.

STATE OF NEW YORK,
County of New York, } ss.:

THOS. L. HAMILTON, of the said County and Clerk of the Supreme Court of said State for said County, do certify, that I have compared the preceding with 219 the original certificate of incorporation of The Mutual Reserve Fund Life Association of New York, on file in my office, and that the same is a correct transcript therefrom, and of the whole of such original. Indorsed filed, January 13th, 1881.

In witness whereof, I have hereunto subscribed my name and affixed my official seal, this 30th day of June, 1902.

THOS. L. HAMILTON,
Clerk.

[SEAL.]

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Exhibt No. 2.

Whereas, the Mutual Reserve Fund Life Association is an existing corporation or association, transacting business of life insurance upon the co-operative or assessment plan, and incorporated under the laws of the State of New York, and desires to incorporate and re-incorporate under and in pursuance of the provisions of the Act of the Legislature of the State of New York, entitled: "An Act to provide for the incorporation and regulation of co-operative or assessment Life and Casualty Insurance Associations and Societies," passed April 2nd, 1883, and desires to form an organization for the purpose of transacting the business of life insurance upon the co-operative or assessment plan under and in pursuance of the provisions of said Act.

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Now, we the undersigned, Edward B. Harper, residing in the City of New York, County and State of New York, Charles R. Bissell, residing in the City of New York, County and State of New York, Henry Overstolz, residing in the City of St. Louis, in the State of Missouri, Benjamin G. Bloss residing in the City of New York, County and State of New York, Alfred Taylor, residing in the City of New York, County and State of New York, William H. Brown, residing in the City of Baltimore, in the State of Maryland, Dimont M. Caldwell, residing in the City of Brooklyn, County of Kings, State of New York, Anthony N. Brady, residing in the City of Albany, County of Albany, and State of New York, Newell W. Bloss, residing in Bath, County of Kings, and State of New York, Charles R. Pratt, residing in the City of Elmira, County of Chemung, State of New York, and Frederick T. Braman, residing in the City of Brooklyn,

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County of Kings, and State of New York, and desiring to incorporate and re-incorporate and to form an organization for the purpose of transacting the business of life insurance upon the co-operative or assessment plan, under and in pursuance of the provisions of said Act and all being citizens of the United States and all being *Directors* of the said Mutual Reserve Fund Life Association, and being and constituting a majority of its Board of Directors, under and in pursuance of, and in conformity with said Act, and in compliance with the requisitions and requirements of the said Act, do hereby associate ourselves together and make, sign, duly acknowledge and file this declaration, and do hereby certify and declare as follows:

FIRST.—We do hereby express our intention to form an organization for the transaction of Life Insurance upon the co-operative or asssessment plan.

SECOND.—The name of the association or corporation is to be as heretofore, "Mutual Reserve Fund Life Association."

THIRD.—The place where the principal office for the transaction of its business shall be located, is the City of New York, in the County and State of New York.

FOURTH.—The mode and manner in which the corporate powers granted are to be exercised are by issuing certificate of membership, policy or other evidence of interest to, and promise or agreement with its members, whereby upon the decease of member, money or other benefit, charity, relief or aid is to be paid, provided or rendered by said corporation or association, to the legal representative of such member, or to the beneficiary designated by

such member, which money, benefit, charity, relief or aid are derived from voluntary donations, or from admission fees, dues and assessments, or some of them, collected, or to be collected from the members thereof, or members of a class therein and interest and accretions thereon, or rebates from amounts payable to beneficiaries, or heirs, and wherein the paying, providing or rendering of such money or other benefit, charity, relief or aid is conditioned upon the same being realized in the manner aforesaid; and wherein the money or other benefit, charity, relief or aid so realized is applied to the uses and purposes of said corporation or association, and the expenses of the management and prosecution of its said business.

FIFTH.—The mode and manner of electing the Directors of said association or corporation who are to have and exercise the general control and management of its affairs and all its funds, which election shall be in such manner as shall be prescribed by the By-laws of said corporation or association is by election at the annual meeting of the members by vote in person or by proxy duly filed with the Secretary of said association or corporation at least ten days prior to such election; and divided into four classes whereby the terms of not less than three such directors shall expire each year, excepting in the event of a failure to elect directors at any such annual meeting the directors whose term of office does not expire shall have power, acting as a Board to elect directors to fill the vacancies caused by such failure to elect, and in case of any vacancy in the Board at any time, the Board of Directors shall have power to fill said vacancy for the unexpired term.

In testimony whereof, We the undersigned Directors of said "Mutual Reserve Fund Life Associa-

tion," and a majority of its Board of Directors, have hereunto subscribed our names this 8th day of December, 1883.

EDWARD B. HARPER,
CHARLES R. BISSELL,
HENRY OVERSTOLZ,
BENJAMIN G. BLOSS,
ALFRED TAYLOR,
WILLIAM H. BROWN,
DIMONT M. CALDWELL,
ANTHONY N. BRADY,
NEWELL W. BLOSS,
CHARLES R. PRATT,
FREDERICK T. BRAMAN.

STATE OF NEW YORK,
City and County of New York, } ss.:

On this 8th day of December, A. D., 1883, before me personally appeared Edward B. Harper, Charles R. Bissell, Benjamin G. Bloss, Alfred Taylor, William H. Brown, Anthony N. Brady, Newell W. Bloss and Frederick T. Braman, all to me personally known and known to me to be the persons described in and who executed the foregoing instrument and in my presence they severally signed said instrument, and they severally acknowledged to me that they executed the same.

FREDERICK S. PARKER,
[SEAL.] Notary Public,
Kings and New York Counties.

STATE OF NEW YORK,
City and County of New York, } ss.:

I, Patrick Keenan, Clerk of the City and County of New York, and also Clerk of the Supreme Court

for the said City and County, the same being a Court of Record.

Do Hereby Certify, that Frederick S. Parker, has filed in the Clerk's Office of the County of New York, a certified copy of his appointment as Notary Public for the County of Kings with his autograph signature, and was at the time of taking the proof or acknowledgment of the annexed Instrument, duly authorized to take the same, And further, that I am well acquainted with the hand-writing of such Notary, and verily believe the signature to the said certificate of proof or acknowledgment to be genuine. I further certify that said instrument is executed and acknowledged according to the law of the State of New York.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of the said Court and County, the 13th day of December, 1883.

PATRICK KEENAN,
Clerk.

[SEAL.]

STATE OF ILLINOIS,
County of Cook, City of Chicago, } ss.:

On this tenth day of December, A. D., 1883, before me, Philip A. Hoyne, a Commissioner of Deeds for the State of New York, residing in Chicago, Illinois, personally appeared, at my office in the said City of Chicago, County of Cook and State of Illinois, Dimont M. Caldwell, to me personally known, and known by me to be one of the persons described in and who executed the within and foregoing instrument of writing and in my presence signed the said instrument and duly acknowledged that he executed the same.

In Witness Whereof, I have hereunto set my hand 235
and affixed my official seal, at the City of Chicago aforesaid, the day and year last above written.

[SEAL.] PHILIP A. HOYNE,
Commissioner of Deeds for the State of New York, in Chicago, Ill.

State of New York, }
OFFICE OF THE SECRETARY OF STATE, } ss.:

I hereby Certify that Philip A. Hoyne, of Chicago, County of Cook and State of Illinois, was, at the time of taking the proof or acknowledgment 236
mentioned in his annexed certificate, a Commissioner for the State of New York to take the proofs and acknowledgment of deeds and other instruments to be used or recorded in this State, and to administer oaths and affirmations; and that such Commissioner was, at the time aforesaid, duly authorized to take the same; and that I have compared the signature of the said Commissioner to the certificate subjoined to the annexed instrument with the signature of such Commissioner deposited in this office, and have also compared the impression of the seal affixed to such certificate with the impression of the seal of such Commissioner, de- 237
posited in this office, and I verily believe the signature and impression of the seal to the said certificate to be genuine.

Witness my hand and the seal of office of the Secretary of State, at the City of Albany, this 17th day of Dec., in the year one thousand eight hundred and eighty-three.

JOSEPH B. CARR,
[SEAL.] Secretary of State.

238 STATE OF MISSOURI, City of St. Louis, } ss.:

I, Charles D. Greene, Jr., a Commissioner for New York, at St. Louis, Missouri, do hereby certify that on this 11th day of December, in the year one thousand eight hundred and eighty-three before me personally appeared in said City of St. Louis, Henry Overstolz, who is personally known to me, and to me known to be one of the individuals described in and who executed the foregoing instrument and in my presence signed the said instrument, and duly acknowledged that he executed the same.

239 In Witness Whereof, I have hereto set my hand and official seal at St. Louis, Missouri, this 11th day of December, A. D., 1883.

[SEAL.] C. D. GREENE, JR.,
Commissioner for New York.

OFFICE OF THE SECRETARY OF STATE, State of New York, } ss.:

I hereby certify, that C. D. Greene, Jr., of the City of St. Louis, and State of Missouri, was, at
240 the time of taking the proof or acknowledgment mentioned in his annexed certificate, a Commissioner for the State of New York, to take the proof and acknowledgment of deeds and other instruments to be used or recorded in this State and to administer oaths and affirmations; and that such Commissioner was at the time aforesaid, duly authorized to take the same and that I have compared the signature of the said Commissioner to the certificate subjoined to the annexed instrument with the signature of such Commissioner deposited in this office, and have also compared the impression

of the seal affixed to such certificate with the impression of the seal of such Commissioner, deposited in this office and I verily believe the signature and impression of the seal to the said certificate to be genuine. 241

Witness my hand and the seal of office of the Secretary of State, at the City of Albany, on this 17th day of December, in the year one thousand eight hundred and eighty-three.

[SEAL.] J. B. CARR,
Secretary of State.

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STATE OF NEW YORK, }
County of Chemung, } ss.:

On the 14th day of December, 1883, before me personally appeared Charles R. Pratt, to me personally known and known to me to be the person described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same.

[SEAL.] W. E. BARDWELL,
Notary Public.

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STATE OF NEW YORK, }
Chemung County Clerk's Office, } ss.:

I, ALEXANDER C. EUSTACE, Clerk of said County and of all the Courts of Record thereof (except the Surrogate's Court) do hereby certify that W. E. Bardwell, Esq., whose name is subscribed to the foregoing certificate of proof or acknowledgment of the annexed instrument, was at the date thereof a Notary Public in and for said County duly authorized and qualified to take the same; that I am well acquainted with his handwriting, and verily

believe that said signature is genuine, and that the said instrument is executed and acknowledged according to the laws of the State of New York.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said County and Court at Elmira, this 14th day of Dec., 1883.

[SEAL.] A. C. EUSTACE,
Clerk.

THE STATE OF NEW YORK,
The City and County of New York, } ss.:

Edward B. Harper, Newell W. Bloss and Alfred Taylor, being duly and severally sworn, say and each for himself says that they are residents of the State of New York, and they are and each of them is a Director of the Mutual Reserve Fund Life Association, and that the said Harper is president of said Association, and that they are three of the corporators named in the foregoing declaration of articles by them subscribed. That they are personally acquainted with Edward B. Harper, Charles R. Bissell, Henry Overstolz, Benjamin G. Bloss, Alfred Taylor, William H. Brown, Dimont M. Caldwell, Anthony N. Brady, Newell W. Bloss, Charles R. Pratt, and Frederick T. Braman, and that such persons are all residents of the State of New York, except Henry Overstolz, who resides at the City of St. Louis, in the State of Missouri and Wm. H. Brown, who resides in the City of Baltimore, in the State of Maryland, and that all of said persons are members of the Board of Directors of said Association, and that said Board consists of twelve persons, and a majority of said Board signed the foregoing declaration or articles. That at least 50 persons eligible under the laws of the State of New York and eligible under the proposed of the said Corporation or Association to member-

ship therein, have made application in writing for such membership. 247

EDWARD B. HARPER,
NEWELL W. BLOSS,
ALFRED TAYLOR.

Subscribed and sworn to before me this 20th day of December, 1883.

FREDERICK S. PARKER,
Notary Public,
Kings and N. Y. Cos.

STATE OF NEW YORK, City and County of New York, } ss.: 248

I, Patrick Keenan, Clerk of the City and County of New York, and also Clerk of the Supreme Court for the said City and County, being a Court of Record.

Do hereby certify that Frederick S. Parker has filed in the Clerk's Office of the County of New York, a certified copy of his appointment as Notary Public for the County of Kings with his autograph signature, and was at the time of taking the annexed deposition, duly authorized to take the same, and that I am well acquainted with the handwriting of said Notary Public, and verily believe that 249 the signature to the annexed certificate is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court and County, the 21st day of Dec., 1883.

PATRICK KEENAN,
Clerk.

[SEAL.]

250 STATE OF NEW YORK,
Office of the Attorney-General,

ALBANY, Dec. 26th, 1883.

Hon. JOHN A. MCCALL, JR.,
Supt. Insurance Dept.

DEAR SIR:—

I hereby certify, that I have examined the annexed Declaration for re-incorporation of the Mutual Reserve Fund Life Association and that the same is conformable to the requirements of Chapter 175, Laws of 1883, and not inconsistent with
251 the Constitution or laws of this State or of the United States.

Respectfully yours,
LESLIE W. RUSSELL,
Attorney-General.

STATE OF NEW YORK.

INSURANCE DEPARTMENT.

ALBANY, December 26th, 1883.

252 I, John A. McCall, Jr., Superintendent of the Insurance Department of the State of New York, do hereby certify that I have compared the annexed copy of Declaration and accompanying papers of the Mutual Reserve Fund Life Association of the City of New York, together with copy Attorney-General's Certificate attached thereto with the originals on file in this department and that the same are correct transcripts therefrom, and of the whole of said originals.

In witness whereof, I have hereunto set my hand

and affixed my official seal, at the City of Albany 253
the day and year first above written.

JOHN A. MCCALL, JR.,
[SEAL.] Superintendent.

STATE OF NEW YORK.

INSURANCE DEPARTMENT.

ALBANY, December 26th, 1883.

Whereas, satisfactory evidence has been exhibited to me, and filed in my office, showing that the Mutual Reserve Fund Life Association of the City 254
of New York has complied with all the provisions of the Act entitled "An Act to provide for the incorporation and regulation of Co-operative or Assessment Life and Casualty Insurance Association and Societies," passed April 2, 1883.

Now, therefore, I, John A. McCall, Jr., Superintendent of the Insurance Department of the State of New York, do hereby certify that the said Mutual Reserve Fund Life Association of the City of New York is duly authorized to commence business and issue certificates as a Co-operative or Assessment Life and Casualty Insurance Association or Corporation, according to the Statutes in such case made and provided, on filing a certified copy of this 255
certificate together with a certified copy of its Declaration or Charter in the office of the Clerk of the County where said Association is located.

In witness whereof, I have hereunto subscribed my name and caused my official seal to be affixed in duplicate, at the City of Albany, the day and year first above written.

JOHN A. MCCALL, JR.,
[L. S.] Superintendent.

256 STATE OF NEW YORK.

INSURANCE DEPARTMENT.

I, John A. McCall, Jr., Superintendent of the Insurance Department of the State of New York, do hereby certify that I have compared the above Copy Certificate of authority with the original on file in this office, and that the same is a correct transcript therefrom, and of the whole of said original.

In witness whereof, I have hereunto set my hand and affixed my official seal, at the City of Albany, this 26th day of December, A. D. 1883.

JOHN A. MCCALL,

257 [SEAL.] Superintendent.

STATE OF NEW YORK, }
County of New York, } ss.:

I, Thomas L. Hamilton, Clerk of the said County and Clerk of the Supreme Court of said State for said County, do certify that I have compared the preceding with the original certificate of incorporation Mutual Reserve Fund Life Association on file in my office, and that the same is a correct transcript therefrom, and of the whole of such original.

Indorsed, filed and recorded Dec. 31, 1883, 3h,

258 2m.

In witness whereof, I have hereunto subscribed my name and affixed my official seal, this 1st day of July, 1902.

THOS. L. HAMILTON,
Clerk.

97

259

Exhibit No 3.

NOTE CHANGE OF NAME.

Make Checks and Money Orders Payable to
MUTUAL RESERVE LIFE INSURANCE
COMPANY.

On April 17th, 1902, Mutual Reserve Fund Life Association re-incorporated as a mutual level premium company under the title of Mutual Reserve Life Insurance Company. Attention is called to this change of name and to the accompanying report of the recent examination of the corporation by the Superintendent of Insurance of the State of 260
New York, which shows a Surplus over liabilities of $466,885.48.

This re-incorporation, while ensuring the stability of the Company, makes no change in your policy.

CHARLES W. CAMP,
Secretary.

Exhibit No. 4.

TEN YEARS DISTRIBUTION DEPOSIT PLAN.

PREMIUM CALL 122. 261
MUTUAL RESERVE LIFE INSURANCE
COMPANY.

FREDERICK A. BURNHAM, President.
Mutual Reserve Building, 305, 307, 309 Broadway,
New York.

NEW YORK, June 2, 1902.

You are hereby notified that a PREMIUM CALL for $..... on account of Mortuary Premiums and Dues is hereby made upon you pursu-

ant to the order of the Board of Directors and Executive Committee of the Company, and in accordance with the terms of your contract under above Policy Number with this Company, which sum is due JUNE 2, 1902, and must be paid within 30 days thereafter. The above payment must be made on or before the SECOND (2) day of JULY 2, 1902, at the Home Office of the Company in the City of New York, or to its duly authorized Local Collector or Treasurer, whose name is stamped upon this notice, and who is furnished with a receipt signed by the Treasurer of the Company. If the same is not paid within the time stated, the Policy and all payments thereon will become forfeited and void, and your membership with the Company will expire with all rights thereunder.

The cause and purpose of this Premium Call is (1) to meet the payment of death claims and expenses as provided in Article VIII., Sec. 1, of the Constitution or By-Laws of the Company; (2) for Dues; (3) for the Reserve or Emergency Fund.

The sending of this notice or acceptance of the above premium shall not be held to waive any forfeiture caused by non-payment of any previous sum when due under said policy.

Remittances must be by valid Draft, Check, Post Office or Express Money Order, and when made by mail are at the sender's risk. Make remittances payable to the order of the Mutual Reserve Life Insurance Company. Cash sent by mail or payments made to any person whose name is not officially stamped on this notice, being unauthorized, will be at the risk of the insured. Agents or Local Treasurers are not authorized to make, alter or discharge contracts, grant credits or waive forfeitures.

CHARLES W. CAMP,
Secretary.

Exhibit No. 5.

265

SUPREME COURT OF TENNESSEE.

JOHN W. BUFORD, Clerk,
T. W. POPE, Deputy,
Jackson.

JUNE 3rd, 1902.

THE MUTUAL RESERVE FUND LIFE ASSO.,
New York City, N. Y.

I am just in receipt of a premium call No. 122, Mutual Reserve Life Ins. Co., on my policy No. 120077. It is stated "amount of call $58.65 less 266
dividend $4.95, net amount payable $53.70." This is followed by a statement: "You are hereby notified that a premium call of $58.65 on account of mortuary premiums and dues is hereby made upon you pursuant to the order of the Board of Directors and Executive Committee of The Company and in accordance with the terms of your contract under above policy No. with this Company," &c. "The above payment must be made on or before the 2nd day of July, 1902, at the home office of the Company," &c. This is followed by direction that remittance must be made to the order of the Mutual Reserve Life Ins. Co. 267

I do not understand all this. My regular semi-annual calls have been for $41.—. During last year some extra assessments were sent me amounting to $13.— each and upon the call of the last I was assured that there would be no further extra calls and this was followed by the regular semi-annual call of $41.— for the past six months, and was paid. I now receive this call in your Co. for payment to another Co. of $58.65. It is not stated whether it is for one, six or twelve months, and is of course a very remarkable and very unexpected

change! one of which I know nothing and of which I am not sufficiently advised to give any proper consideration. I wish you to write me fully all about it.

I have also heard that reductions had been made by your Company on various policies or classes of policies long held therein and on which all premium calls had been paid. Whether it has been attempted to place mine in that class or not I am not advised and I wish to know what you claim has been done in that respect. My policy is on the ten year distribution deposit plan and I have not been informed as to what action has been taken regarding that. I notice in your present call the statement "less dividend $4.95," and I may perhaps infer from that that this has reference to the distribution plan. Whether that is true or not, I, of course, cannot tell from the statement, or whether and how this plan is proposed to be continued. I wish you to write me fully regarding this. I cannot act in change of plans, companies and assessments without I am fully advised and they are satisfactory to me and consequently before taking any further or other steps in the matter I wish to be fully advised.

Yours truly,

D. L. SNODGRASS.

Address,

Jackson, Tennessee.

101

Exhibit No. 6.

271

H. M. 5541.

NEW YORK, June 11, 1902.

Mr. D. L. SNODGRASS,
Jackson, Tenn.

DEAR SIR:

Replying to your favor of the 3d instant, concerning your policy No. 120077, I beg to say that the recent notice received by you is in accordance with the conditions upon which it is carried. Your policy is a ten years' distribution deposit policy, 272
under which the premium rate was intended to remain level for a period of ten years, as it has, at the end of which time the cost of the assurance is based upon the attained age, subject, however, to reduction through the application of any surplus accruing from the payments of the first ten years. The ten years having now expired, you are entitled under the provisions of the policy, to a dividend from the surplus referred to, applicable to the reduction of the future cost of the assurance, and you may expect that the gross premium required for the second period of ten years will be the same as that now required, resulting in no increase in the 273
amount of premiums to be paid during such term. Your policy is not a contract providing for a level premium throughout life, the premium rate which you have paid under the policy not having included the reserve accumulation necessary to continue the assurance as a whole life continuous premium policy.

Relative to the new form of contract now being issued by the company by reason of the recent reincorporation upon the legal reserve basis, I have to say that the new policy is a guaranted contract

274 in every particular, carrying it with a fixed or level premium rate throughout life and the values —such as cash, loan paid-up and extended assurance being for stated amounts. If you will furnish us with a satisfactory medical examination we can exchange your present contract for one issued upon this basis, the new policy to be written as of your original date of entry into the Company, with the premium rate placed accordingly. It will, of course, be necessary to provide for the reserve accumulation covering that period in order to give you a new policy occupying the same position as if you had originally taken out your assurance upon
275 the legal reserve basis, and this reserve, which amounts to $996.30 can be met by placing a lien against the policy covering the same, which lien would stand as a loan under the policy, bearing interest at the rate of five per cent. per annum, but carrying with it no personal liability for its payment beyond its deduction from the proceeds of the policy. The semi-annual premium rate under the policy would be $83.35, and the semi-annual interest on the lien $24.16, making the semi-annual payments in gross $107.51. This would give you a participating contract, under which dividends would be apportioned annually beginning with the first anniversary of the insurance of the policy after
276 the new one has been in force one year and credit so applied would go toward the reduction of the lien, thus decreasing the indebtedness under the policy, or could be applied toward the payment of the interest thereon. If you do not desire a policy subject to lien, we can give you one for $5,000.00 free from such charge, which would be written upon the basis of your present or attained age, and the semi-annual rate thereunder would be $123.50, which rate would be subject to reduction through the application of dividends from the surplus in

the future, or upon the non-participating basis, 277
under which there would be no share in dividends, the semi-annual rate would be $106.85. Under either of the above propositions, the new contract would be incontestible from date of issue by reason of your present assurance.

Very truly yours,

L. E. ALBERT,
Vice-President's Secretary.

Exhibit No. 7.

STATE OF NEW YORK, 278

INSURANCE DEPARTMENT.

ALBANY, April 23rd, 1902.

I, Francis Hendricks, Superintendent of Insurance of the State of New York, do hereby certify that I have compared the annexed copy of Declaration and Charter of the "Mutual Reserve Life Insurance Company of the City of New York" together with Certificate of Attorney General and Superintendent of Insurance dated April 17, 1902, attached thereto with the originals on file in this department, and that the same are correct transcripts therefrom, and of the whole of said originals. 279

In witness whereof, I have hereunto set my hand and affixed my official seal, at the City of Albany, the day and the year first above written.

FRANCIS HENDRICKS,
[L. S.] Superintendent of Insurance.

280

DECLARATION AND CHARTER

OF

MUTUAL RESERVE LIFE INSURANCE COMPANY.

This is to certify that the Mutual Reserve Fund Life Association, a corporation originally organized under and by virtue of Chapter 267 of the Laws of 1875, and re-incorporated and transacting business under Chapter 175 of the Laws of 1883, of the State of New York, and the Laws amendatory thereof and supplementary thereto, has duly accepted the provisions of the Act of the Legisla-
281 ture of the State of New York, being Chapter 690 of the Laws of 1892, known as "The Insurance Law," and the amendments thereto, and in conformity with the same has duly adopted the following amended charter:

Article I.

The name of the corporation shall be "Mutual Reserve Life Insurance Company."

Article II.

The company shall be located and its principal
282 place of business shall be in the City of New York, in the State of New York.

Article III.

The business of the Company shall be insurance upon the lives or the health of persons, and all and every insurance appertaining thereto, the making of endowments, and the granting, purchasing and disposing of annuities, such kind of insurance being authorized under subdivision one of Section 70 of "The Insurance Law."

ARTICLE IV. 283

SECTION 1. All the corporate powers of the Company shall be exercised by the Board of Directors, and such officers and agents as the Board may elect or appoint.

SECTION 2. The Board of Directors shall consist of twelve persons, the majority of whom shall be citizens and residents of the State of New York, elected as hereinafter specified and as in the by-laws provided.

SECTION 3. The Directors shall continue to be divided into four classes of three each, and as the 284
term of each class shall expire its successors shall be elected at the annual meeting of the members for the term of four years, three directors to be elected each year. In case of a failure to elect directors at any annual meeting of the members, the directors whose regular term of office does not then expire, shall have power, acting as a Board, to elect directors to fill the vacancies caused by such failure to elect; and in case of any vacancy occurring in the Board, at any time, the Board of Directors shall have power to fill such vacancy for the unexpired term, a majority of the votes of a quorum of the then existing board constituting a choice. Any 285
retiring director shall be eligible for re-election.

SECTION 4. The present by-laws of the corporation, which form part of its contracts with its members, shall continue to be the by-laws of the company unless or until the same shall be revised or amended in the manner therein provided.

ARTICLE V.

SECTION 1. The annual meeting of the members of the company shall be held on the fourth Wednes-

286 day in January of each year, at which meeting the election of directors shall be held. Not less than five days' notice of each annual meeting shall be given by the publication of the notice of such annual meeting for three consecutive days at least five days prior thereto in two daily newspapers, published in the city of New York. All such elections shall be by ballot, and a plurality of votes cast shall elect. The Board of Directors shall appoint three inspectors for each annual election.

SECTION 2. At every annual election of directors each member of the company in good standing shall
287 be entitled to one vote, in person or by proxy, provided that no vote by proxy or power of attorney shall be accepted unless registered with the secretary of the company at least ten days before the election at which it is offered, and such proxy must at the time be a member of the company.

SECTION 3. The regular annual meeting of the Board of Directors shall be held after the annual meeting of members at which the Board of Directors shall elect a president, a vice-president, and such other officers as may be prescribed by the by-laws, who shall hold their respective offices for the term therein mentioned.
288

SECTION 4. The present members of the Board of Directors and present officers of the corporation shall continue to be such directors and officers until the expiration of the respective terms for which they have been elected.

ARTICLE VI.

SECTION 1. The Company shall have no capital stock, but shall be a mutual company.

SECTION 2. The Board of Directors shall, within 289
two months subsequent to the first day of January in each year, cause an estimate to be made of the profits and true state of the affairs of the company, as near as may be, for the preceding year, which estimate and the individual allotment thereof, shall be conclusive upon all persons entitled to share in any distribution of surplus which shall be paid or credited under and according to the terms of the several respective policy contracts.

SECTION 3. The Board of Directors shall have authority to reserve and set aside such an amount of the profits in excess of the reserve required by law 290
to be held and maintained, as shall in their judgment be for the best interests of the company.

ARTICLE VII.

No person shall incur any personal liability for the losses, obligations or other liabilities of this company by reason of being a member thereof or a policy or certificate holder therein.

ARTICLE VIII.

The company shall be entitled to have and enjoy all the rights, privileges and provisions of existing 291
laws which might be included in this charter and enjoyed by it, if it were originally incorporated under "The Insurance Law" of this State.

ARTICLE IX.

The Charter of the Company shall be perpetual.

In witness whereof, the corporation has caused its corporate seal to be affixed hereto and the same to be attested by its President and Secretary this

292 twenty-fifth day of February, one thousand nine hundred and two.

F. A. BURNHAM,
President.

[L. S.]

CHARLES W. CAMP,
Secretary.

STATE OF NEW YORK,
City and County of New York, } ss.:
Borough of Manhattan,

On this twenty-fifth day of February, one thousand nine hundred and two, before me duly ap-
293 peared Frederick A. Burnham and Charles W. Camp, each personally known to me, and they severally and duly acknowledged the execution of the foregoing instrument as the act and deed of the aforesaid corporation, and each being by me duly and severally sworn each for himself says that the said Frederick A. Burnham resides in the Borough of Manhattan, in the City, County and State of New York, and is President of the said corporation; and the said Charles W. Camp that he resides in the Borough of Queens, County of Queens, City of New York, and is the Secretary of the said corporation; that the seal affixed to the foregoing in-
294 strument is the corporate seal of said corporation and was duly affixed thereto by the Secretary in pursuance of authority of the Board of Directors, and that the said President and Secretary have attested the same by their signatures in pursuance of like authority.

SEWELL T. TYNG,
Notary Public,
New York County.

[L. S.]

This is to certify that at a regular adjourned 295
meeting of the Board of Directors of the Mutual Reserve Fund Life Association duly called and held on the 5th day of February, 1902, at its Home Office in the Mutual Reserve Building at Nos. 305, 307, 309 Broadway, in the City of New York, more than a majority of said Directors being present, the following resolution was duly offered, seconded and unanimously adopted:

Resolved, That the Mutual Reserve Fund Life Association do and it hereby does accept the provisions of Chapter 690 of the Laws of 1892, and the various amendments thereof, and adopts the foregoing amended charter pursuant thereto, and 296
that from and after the same has been duly approved by the Superintendent of Insurance of the State of New York and duly filed as required by law, the business of this corporation shall be transacted under and according to the provisions of said amended charter.

Resolved, That the President and Secretary be and they hereby are authorized and directed to execute for and in the name of this corporation each and every certificate, affidavit or other paper necessary to carry into effect the foregoing resolution.

F. A. BURNHAM,
President.
CHARLES W. CAMP, 297
Secretary.

STATE OF NEW YORK,
City and County of New York, } ss.:
Borough of Manhattan,

On this twenty-fifth day of February, one thousand nine hundred and two, personally appeared before me Frederick A. Burnham, President, and Charles W. Camp, Secretary, of the Mutual Reserve

298 Fund Life Association, who being by me duly and severally sworn according to law, say that they are respectively the President and Secretary of said corporation and that they were present at the meeting of the Board of Directors duly called and held as aforesaid, and that they were actually present at said meeting more than a majority of said Board, and that the foregoing resolution was duly offered, seconded and unanimously adopted as aforesaid. Deponents further say that they were also by resolution of said Board, passed at said meeting, duly authorized and directed to make this affidavit.

299 F. A. BURNHAM,
President.
CHARLES W. CAMP,
Secretary.

Subscribed and sworn to before me this twenty-fifth day of February, 1902.
SEWELL T. TYNG,
Notary Public,
New York County.

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300 STATE OF NEW YORK, County of New York, } ss.:

I, Thomas L. Hamilton, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the same being a Court of Record, do hereby certify, that Sewell T. Tyng, before whom the annexed deposition was taken was, at the time of taking the same, a Notary Public of New York, dwelling in said County, duly appointed and sworn and authorized to administer oaths to be used in any Court in said State, and for general purposes; that I am well acquainted with the hand-

writing of said Notary, and that his signature 301
thereto is genuine, as I verily believe.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court and County, the 25th day of Feby., 1902.

THOS. L. HAMILTON,
Clerk.

This is to certify that the following is a true and correct copy of the minutes of a meeting of the Board of Directors of the Mutual Reserve Fund Life Association held at the office of the corporation on the 5th day of February, 1902, at 2:30 o'clock in the afternoon. 302

The regular adjourned meeting of the Board of Directors of the Mutual Reserve Fund Life Association was held pursuant to notice and adjournment on Wednesday, February 5th, 1902.

Present: Directors FREDERICK A. BURNHAM, President.

HILLARY BELL,
HORACE H. BROCKWAY,
GEORGE BURNHAM, JR.,
RICHARD DEEVES,
GEORGE D. ELDRIDGE,
EDWARD M. L. EHLERS, 303
GEORGE W. HARPER,
CHARLES E. MABIE,
ELMER A. MILLER,
W. T. B. MILLIKEN.

Absent: Director John J. Acker.

President Frederick A. Burnham in the chair.

Charles W. Camp, Secretary.

The minutes of the regular adjourned meeting held on Wednesday, January 29th, 1902, were read and on motion duly seconded were approved.

304 On motion of Director George Burnham, Jr., the proper officers were authorized to execute an instrument appointing Maria D. McAllister, of the City of Winnipeg, attorney for the service of process in the province of Manitoba.

On motion of Vice-President George D. Eldridge, duly seconded, the following resolutions were unanimously adopted upon the following vote by roll call:

Frederick A. Burnham,	aye.
Hillary Bell,	aye.
Horace H. Brockway,	aye.
George Burnham, Jr.,	aye.
305 Richard Deeves,	aye.
George D. Eldridge,	aye.
Edward M. L. Ehlers,	aye.
George W. Harper,	aye.
Charles E. Mabie,	aye.
Elmer A. Miller,	aye.
W. T. B. Milliken,	aye.

Whereupon, the President declared the resolutions adopted by unanimous vote, viz.:

Resolved, That the Mutual Reserve Fund Life Association do and it hereby does accept the provisions of Chapter 690 of the Laws of 1892, and the various amendments thereof, and adopts the
306 foregoing amended charter pursuant thereto, and that from and after the same has been duly approved by the Superintendent of Insurance of the State of New York and duly filed as required by law, the business of this corporation shall be transacted under and according to the provisions of said amended charter.

Resolved, That the President and Secretary be and they hereby are authorized and directed to execute for and in the name of this corporation each and every certificate, affidavit or other paper

necessary to carry into effect the foregoing resolution. 307

Director Richard Deeves requested permission to be absent until the meeting of the Board to be held on March 19, 1902.

On motion duly seconded, request was duly granted.

Minutes of the Meeting of the Executive Committee held on January 29th, 1902, were read and approved, the action of the Executive Committee as therein recorded was ratified and approved by the Board.

No further business appearing, on motion duly seconded, the meeting adjourned to Tuesday, February 11th, 1902, unless sooner convened at the call of the chair. 308

CHARLES W. CAMP,
Secretary.

We also certify that the proceedings indicated by the foregoing minutes were actually taken as therein indicated, and also that twelve Directors constitute the entire Board of Directors of the Mutual Reserve Fund Life Association.

F. A. BURNHAM,
President. 309

CHARLES W. CAMP,
Secretary.

Subscribed and sworn to before me this Twenty-fifth day of February, 1902

SEWELL T. TYNG,
Notary Public,
New York County.

310 STATE OF NEW YORK,

ATTORNEY GENERAL'S OFFICE.

ALBANY, N. Y., April 17, 1902.

TO THE SUPERINTENDENT OF INSURANCE:

I hereby certify that I have examined the annexed declaration and charter of the Mutual Reserve Life Insurance Company and that I find the same to be made in accordance with the requirements of law and not inconsistent with the Constitution or Laws of the United States or the State of New York.

311 JOHN C. DAVIES,
Attorney General.

STATE OF NEW YORK,

INSURANCE DEPARTMENT.

ALBANY, N. Y., April 17, '02.

Whereas, the Mutual Reserve Fund Life Association, a corporation located in the City of New York, in the County and State of New York, a domestic insurance corporation, existing and doing
312 business at the time of the passage of Chapter 690 of the Laws of 1892, having availed itself of the provisions of the said Chapter and the amendments thereof, as the same may refer to the re-incorporation or prior existing corporations, and said corporation having filed with this department a declaration and amended charter adopted by a vote of a majority of the Board of Directors of said corporation, as provided for under Section 52 of said Chapter, and the same having been submitted by me to the Attorney General and certified by him to be in accordance with the requirements of law.

Now, therefore, I, Francis Hendricks, Superintendent of Insurance of the State of New York, do hereby certify that the consent of said Superintendent of Insurance as required by the provisions of said Section 52, is hereby granted to transact the business of insurance as in said amended charter provided and attached to the said amended charter provided and attached to the said declaration and amended charter of the Mutual Reserve Life Insurance Company, which has this day been filed with this Department 313

In witness whereof, I have hereunto set my hand and affixed my official seal in duplicate at the City of Albany this seventeenth day of April, One Thousand Nine Hundred and Two. 314

FRANCIS HENDRICKS,
(L. S.) Superintendent of Insurance.

(Filed and recorded April 24th, 1902, 1h., 32m.)
M. J. D.

No. 697.

STATE OF NEW YORK, }
County of New York, } ss.:

I, THOMAS L. HAMILTON, Clerk of the said County and Clerk of the Supreme Court of said State for said County, do certify, that I have compared the preceding with the original certificate of declaration and charter of Mutual Reserve Life Insurance Company, on file in my office, and that the same is a correct transcript therefrom, and of the whole of such original. Indorsed, filed, and recorded April 24th, 1902, 1h., 32m. 315

In witness whereof, I have hereunto subscribed my name and affixed my official seal, this 1st day of July, 1902.

THOMAS L. HAMILTON,
Clerk.

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Exhibit No. 7 1-2.

Death Claims "Compromised," "Scaled Down," or "Dropped by the Mutual Reserve Fund Life Ass'n During 1901."

Cert. No.	Date of Death. Date.	Year.	Name of Insured.	Certificate. Amount of.	Beneficiaries. Amount Paid.
64,420	....	....	T. W. Parott	$2,435.00	$466.22
26,350	June 10.	1898	P. Cassman	5,000.00	3,216.00
319,552	Feb 13.	1899	H. L. Nance	1,000.00	900.00
337,043	Mar. 1.	1899	E. Oesling	3,000.00	2,250.00
329,803	Nov. 11.	1899	S. Denzer	10,000.00	8,000.00
312,575	Nov. 20.	1899	C. Gabelman	2,000.00	750.00
339,736	Feb. 19.	1900	A. J. Gregory	1,000.00	600.00
110,309	Feb. 3.	1900	E. J. Cooney	3,000.00	2,000.00
333,288	April 13.	1900	J. E. West	4,000.00	3,000.00
349,847	April 20.	1900	J. D. Bonner	1,000.00	750.00
335,708	April 26.	1900	N. C. Mitchell	10,000.00	9,106.30
109,876	May 10.	1900	M. J. Thompson	1,000.00	506.82
317 206,706	May 14.	1900	G. Kirchner	1,000.00	250.00
321,294	May 15.	1900	R. C. Oldenburg	2,000.00	1,652.46
64,268	May 18.	1900	T. C. Wilthew	3,896.00	1,704.50
335,818	July 2.	1900	A. Pollak	3,000.00	1,800.00
346,572 346,573	April 15.	1899	G. B. Opp	2,000.00	1,021.20
339,506	July 19.	1900	O. L. y Torres	3,000.00	250.00
21,127	July 18.	1900	M. Staub	2,000.00	1,764.07
350,115	July 8.	1900	R. B. Grau	1,000.00	567.52
340,710	July 24.	1900	E. Major	1,000.00	575.00
124,691	July 20.	1900	F. Thornley	2,435.00	997.54
88,606	Aug. 3.	1900	W. C. Crouse	2,000.00	1,568.24
346,916	July 18.	1900	J. Fout	1,000.00	500.00
348,034	Aug. 7.	1900	W. J. Musgrove	2,000.00	1,000.00
10,830	Aug. 9.	1900	H. J. Johnston	2,000.00	1,543.00
2,461	Aug. 17.	1900	E. Mellen	1,000.00	607.58
88,909	Aug. 18.	1900	G. Hodgkiss ($200*)	2,000.00	800.00
345,239 111,450	Aug. 18.	1900	S. Berkson	12,000.00	10,142.40
350,220	Aug. 13.	1900	H. J. A. Erickson	1,000.00	419.41
327,047	Aug. 31.	1900	J. Kirk	1,000.00	500.00
318 34,762	Sept. 4.	1900	A. Czizek ($278.13 pr. pd.)	2,500.00	700.00
143,385	Sept. 12.	1900	W. S. Hubbard ($319.65a)	2,500.00	1,200.00
67,767	Sept. 4.	1900	J. Gross ($985.30) pr. pd.)	5,000.00	2,150.00
224,466 224,464 224,465	Sept. 19.	1900	R. L. Durgan	3,000.00	1,171.15
49,415	Sept. 20.	1900	M. C. B. Burroughs	3,000.00	996.05
342,070	Sept. 25.	1900	E. Beckert	2,000.00	1,200.00
188,075	Sept. 8.	1900	A. Perkins	3,000.00	1,531.56
79,121	Sept. 19.	1900	H. G. Savage	10,000.00	7,000.00
67,791	Sept. 24.	1900	F. M. Randall	5,000.00	3,720.25
387,062	Sept. 25.	1900	J. Mayer ($18.95 pr. pd.)	1,000.00	864.20
184,258 184,259 184,260	Sept. 28.	1900	T. W. Tatum	3,000.00	1,500.00
139,371	Oct. 8.	1900	J. Brente ($687.13 pr. pd.)	2,500.00	500.00
154,406	Oct. 2.	1900	W. A. Thomas (379.49 pr.)		

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Cert. No.	Date of Death. Date.	Year.	Name of Insured.	Certificate. Amount of.	Beneficiaries. Amount Paid.	319
145,742	Oct. 9.	1900	K. Webber	3,000.00	2,581.15	
77,798	Oct. 15.	1900	C. Printen	1,000.00	632.79	
159,573	Dec. 13.	1900	J. C. Wilkins	1,000.00	425.00	
61,842	Oct. 17.	1900	M. A. Malley ($300*)	1,250.00	300.00	
217,517	....	....	F. Zublena	1,200.00	310.40	
142,675	Oct. 25.	1900	W. L. Byars ($294.14a)	7,000.00	5,718.30	
28,633	Oct. 30.	1900	C. Hodges	1,000.00	926.52	
123,647	Oct. 29.	1900	H. E. English ($1,295.14a)	5,000.00	1,000.00	
147,976	Nov. 6.	1900	H. Martin	3,000.00	1,602.29	
198,476	Nov. 6.	1900	F. B. West ($100 pd. 1900)	1,000.00	475.00	
131,508	Oct. 30.	1900	E. B. Summeril	1,500.00	1,030.00	
71,388	Nov. 7.	1900	C. E. Hansom	2,000.00	1,023.30	
150,862	Nov. 12.	1900	L. F. Griffith ($93.62a)	2,000.00	1,331.61	
135,452	Nov. 5.	1900	S. Warford ($1,741.70a)	5,000.00	2,317.23	
61,031 68,803	Nov. 18.	1900	G. W. Brecher	11,000.00	7,069.20	
88,865	Nov. 23.	1900	J. Goldman	5,000.00	3,790.80	
381,255	Nov. 23.	1900	M. M. Moore	5,000.00	1,500.00	
8,230	Nov. 21.	1900	A. E. Pipher	2,000.00	603.88	
208,702	Nov. 24.	1900	J. F. Fisher	2,000.00	1,092.80	320
109,373 107,702	Nov. 29.	1900	C. F. Goettmann	10,000.00	8,868.50	
119,000	Nov. 24.	1900	R. C. Sloan ($209.19a)	1,000.00	422.26	
384,877	Nov. 24.	1900	F. Roshirt ($483.70a)	2,000.00	575.00	
340,006	Nov. 28.	1900	G. Grovn	1,000.00	213.02	
150,315	Nov. 20.	1900	T. F. Snover ($2,453.94a)	9,000.00	4,837.95	
320,807	Dec. 8.	1900	W. J. Becker	1,000.00	550.00	
154,761 157,069	Dec. 27.	1900	H. Blythe ($60.06 pr. pd.)	2,000.00	1,382.82	
112,769	....	1900	P. B. Herbst	1,000.00	652.28	
185,015	Dec. 14.	1900	N. B. Wolf	10,000.00	7,500.00	
313,928 186,255	Dec. 20.	1900	E. B. Weed	10,000.00	8,032.80	
138,760 129,581	Dec. 21.	1900	J. S. Stevens	7,500.00	5,110.30	
137,262	Dec. 17.	1900	W. S. Alexander	2,000.00	504.74	
9,527	Dec. 18.	1900	H. A. Scribner	2,500.00	1,750.00	
131,424 39,241	Dec. 26.	1900	G. L. De Forest	2,000.00	724.45	
53,886	Dec. 28.	1900	L. B. Wombuell	2,500.00	1,606.19	
347,284	Dec. 29.	1900	C. L. McDaniel	1,000.00	650.00	321
138,939	Dec. 26.	1900	C. E. Caldwell	3,000.00	2,903.49	
351,193	Jan. 1.	1901	W. F. Robinson	2,000.00	200.00	
335,718	....	....	H. E. Pearson	2,000.00	1,000.00	
48,140	Jan. 5.	1901	M. Doyle	1,000.10	647.24	
144,431	Jan. 11.	1900	W. P. Osborne	2,000.00	1,301.46	
501,254	Jan. 5.	1901	C. Kalzenmeyer	1,000.00	768.40	
72,427	Jan. 9.	1901	P. Zang	2,000.00	804.64	
501,672	Jan. 12.	1901	H. Kelfus	2,500.00	2,080.10	
56,361	Jan. 5.	1901	J. O. Gladstone	3,500.00	3,017.10	
130,141	Jan. 9.	1901	F. N. Cobb	2,000.00	1,386.01	
501,216	Dec. 28.	1900	W. C. Jones	2,500.00	2,395.87	
67,752	Jan. 10.	1901	H. E. Langhorn	5,000.00	3,385.20	
88,686	Jan. 30.	1901	A. L. de Villoroy	3,000.00	1,966.28	
149,636	Jan. 16.	1901	L. C. Jacobs	5,000.00	4,925.23	
3,878	Jan. 12.	1901	J. M. Gagnier	2,000.00	1,355.72	

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11,039			....	E. A. Whiteside	5,000.00	250.00
217,001	Jan.	26.	1901	W. C. F. Wood	2,000.00	400.00
340,084	Jan.	16.	1901	A. Naegel	1,000.00	500.00
502,880	Jan.	21.	1901	T. E. Henegen	5,000.00	4,506.60
153,148	Jan.	21.	1901	J. W. Worm	2,500.00	1,851.05
387,598	Jan.	28.	1901	C. F. Hallowell	10,000.00	8,221.70
142,615	Feb.	1.	1901	F. Meyers	1,000.00	500.00
203,681	Jan.	31.	1901	D. Buckley	3,000.00	2,308.97
147,494	Jan.	31.	1901	G. Koenne	1,000.00	564.30
385,143	Jan.	29.	1901	J. W. Sanders	5,000.00	3,498.74
150,048	Jan.	31.	1900	L. R. Spooner	1,000.00	733.62
99,201	Feb.	3.	1901	A. C. Mabee	1,000.00	733.62
29,727	Feb.	9.	1901	G. Hetzel	1,000.00	614.36
156,818	Feb.	7.	1901	G. Kocher	1,250.00	1,006.47
342,671	Feb.	10.	1901	H. Grube	1,000.00	285.41
136,353	Feb.	7.	1901	J. McConahy	5,000.00	4,449.51
134,717			....	M. Koenig	3,500.00	3,010.15
385,741	Feb.	13.	1901	D. G. McCormick	5,000.00	3,527 96
93,444	Feb.	21.	1901	G. S. Day	2,000.00	1,236.64
164,600	Feb.	19.	1901	C. Deckelmann	5,000.00	3,900.00
406,158	Feb.	21.	1901	M. C. Martin	10,000.00	4,750.00
329,754	Feb.	16.	1901	M. Condon	3,000.00	2,000.00
162,539	Feb.	21.	1900	J. Corcoran	5,000.00	3,365.39
349,916	Feb.	25.	1901	P. Lynch	1,000.00	400.00
219,561	Feb.	15.	1901	E. P. Goodwin	5,000.00	4,811.42
156,705	Dec.	22.	1900	S. S. Blackwell	1,250.00	1,149.08
134,204	Feb.	28.	1901	A. A. Bernstein	5,000.00	4,139.41
335,080 335,081	Feb.	22.	1901	A. R. Gandolfo	5,000.00	3,208.10
386,335 194,637	Mar.	2.	1901	J. Dudenhoefer	5,000.00	2,627.82
540,169	Feb.	14.	1901	J. W. Grover	1,000.00	447.71
159,690 321,538	Mar.	5.	1901	J. Graham	10,000.00	5,851.13
203,913	Feb.	17.	1901	R. H. Seymour	5,000.00	1,150.00
3,843	Mar.	8.	1901	J. Robb	2,000.00	1,700.00
139,787	Mar.	6.	1901	J. N. Lancaster	5,000.00	2,771.40
384,694	Mar.	18.	1901	E. H. Hamilton	1,000.00	890.17
149,990	Mar.	22.	1901	E. L. Green	1,000.00	578.40
501,828			....	J. Moore	1,000.00	687.46
323,476	April	2.	1901	H. W. McAllester	1,000.00	250.00
185,636	Mar.	31.	1901	W. N. Purdon	3,000.00	1,225.78
167,829	Mar.	7.	1900	A. E. Force	1,000.00	511.72
145,016	April	2.	1901	R. A. W. Schulz	1,000.00	641.18
303,086	Mar.	8.	1901	J. H. Cheves	5,000.00	1,500.00
127,036	April	5.	1901	F. Hartman	5,000.00	3,886.73
360,375			....	J. Campbell	2,000.00	600.00
323,362	April	2.	1901	E. Hollis	5,000.00	2,410.00
158,111	April	9.	1901	T. S. McCaughan	2,500.00	1,618.31
400,321	April	23.	1901	M. Kaye	1,500.00	800.00
148,205	April	9.	1901	C. W. Craft	2,000.00	1,628.03
342,462	April	10.	1901	J. H. Benham	1,000.00	425.00
110,759 110,760	April	13.	1901	A. Holterhoff	10,000.00	7,223.56
319,536	April	20,	1901	J. Sears	1,000.00	450.00
343,078	April	10.	1901	T. E. Little	3,000.00	2,000.00

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159,123 } 130,204 }	....April 19.	1901	C. Schiffer	5,000.00	4,500.00	
540,185	.....April 21	1901	A. Ulrick	1,000.00	566.42	
1,191	.....April 20.	1901	M. A. Freeman	2,000.00	625.00	
144,172	.....April 23.	1901	J. E. Pedigo	1,500.00	1,176.96	
129,888	.....April 24.	1901	E. Byrne	2,500.00	1,590.12	
11,699	.....April 21.	1901	C. J. Hum	3,000.00	1,012.52	
48,143 } 44,677 }	....April 26.	1901	L. P. Brik	10,000.00	6,112.00	
146,393 } 144,013 }	....April 22.	1901	H. F. Kruecke	3,000.00	1,209.10	
153,882 } 101,543 }	....April 27.	1901	G. W. Leisner	3,000.00	1,817.64	
502,307	.....		S. Degen	1,000.00	838.49	
208,645	.....April 26.	1901	C. Olsen	3,000.00	1,516.23	
6,575	.....		C. Brown	5,000.00	3,869.43	
60,632	.....April 28.	1901	H. C. Benn	2,500.00	1,700.68	
501,131	.....May 13.	1901	C. F. Eicke	2,500.00	1,932.11	
341,311 } 341,876 }	....May 13.	1901	C. E. Adams	4,000.00	1,650.00	
9,723	.....May 8.	1901	F. Beatty	1,000.00	657.42	326
333,832 } 333,833 }	....May 14.	1901	G. Smith	3,000.00	1,066.78	
128,868	.....May 11.	1901	D. P. McLawrin	5,000.00	3,558.80	
333,983 } 333,073 } 313,447 } 135,585 }	.....		A. Buchanan	17,000.00	8,296.45	
386,133	.....May 20.	1901	S. U. Hoy	1,500.00	1,150.27	
155,165	.....May 19.	1901	T. Kavel	2,500.00	2,078.43	
224,752	.....May 21.	1901	W. S. Hunnell	1,000.00	800.00	
385,510	.....May 10.	1901	W. Johnston	5,000.00	4,776.60	
81,103	.....Dec. 12.	1900	J. Stumpf	5,000.00	1,776.90	
139,414	.....May 11.	1901	E. B. Judd	2,500.00	1,925.89	
134,023	.....April 26.	1901	W. Latimer	4,870.00	2,557.15	
394,849 } 394,850 }	....May 27.	1901	J. L. Feeney	15,000,00	8,873.77	
317,875	.....May 27.	1901	J. Scully	1,000.00	225.00	
178,175	.....May 31.	1901	W. Smith	1,000.00	520.93	
4,174	.....May 24.	1901	G. A. Henry	1,000.00	158.20	
2,068	.....April 3.	1901	R. E. Hopkins	1,369.41	200.00	327
386,858	.....May 29.	1901	T. Brinkman	3,000.00	1,517.71	
133,274	.....May 29.	1901	W. Stewart	5,000.00	4,646.84	
137,274	.....June 10.	1901	P. Scollan	2,000.00	1,041.86	
191,588	.....June 11.	1901	C. A. E. Gagnon	5,000.00	4,000.00	
17,569 } 78,412 }	....June 10.	1901	P. G. Nash	5,000.00	3,053.85	
384,034	.....June 16.	1901	J. Blankenburg.	2,000.00	1,555.67	
787	.....June 12.	1901	D. B. Wauless	2,000.00	1,151.46	
141,239	.....June 13.	1901	L. Scharsinghauser	1,000.00	374.37	
133,917	.....June 17.	1901	J. W. Hebble	3,000.00	2,178.36	
349,909	.....	...	P. S. Corregan	3,000.00	552.88	
130,553	.....June 14.	1901	W. B. Foster	1,000.00	684.61	
165,417	.....June 23.	1901	W. S. Anderson	5,000.00	1,500.00	
103,576	.....June 28.	1901	T. Swalwell	2,000.00	1,525.32	
132,209	.....July 1.	1901	M. D. Alvord	2,500.00	2,274.39	

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	151,077	July	7.	1901	J. Lippl	1,000.00	498.70
	540,258	July	2.	1901	G. Fulling	2,000.00	1,199.80
	134,645	June	28.	1901	A. H. Kneeland	5,000.00	4,419.28
	151,358	July	1.	1901	H. Mundt	1,250.00	1,103.06
	108,077	June	25.	1901	V. Gargons	6,000.00	2,284.02
	250,034	June	26.	1901	L. Levy	2,000.00	1,832.00
	12,589	Oct.	14.	1901	C. F. Morgenweck	1,000.00	394.34
	65,274	July	20.	1901	J. L. Dyer	10,000.00	9,218.36
	345,723	July	20.	1901	J. Schmidt	1,000.00	500.00
	8,152	July	21.	1901	L. Myers	5,000.00	3,910.08
	131,598	July	24.	1901	H. T. Beckley	2,500.00	2,408.92
	127,800	July	26.	1901	A. Tetz	5,000.00	3,138.06
	145,895	July	28.	1901	J. Roe	2,500.00	2,194.20
	390,011	Aug.	8.	1901	T. J. Loyd	1,000.00	90.00
	137,294	Aug.	1.	1901	R. C. Gibson	1,000.00	558.24
	133,153	Aug.	5.	1901	H. H. Hoyt	6,500.00	5,514.67
	396,506	Aug.	10.	1901	O. D. Horton	5,000.00	4,152.95
	397,234 396,467	Aug.	20.	1901	S. Rockefeller	4,000.00	3,574.15
329	396,468						
	157,704	Aug.	19.	1901	S. R. Radix	3,000.00	2,369.07
	120,431	Aug.	30.	1901	C. Mensing	1,000.00	584.50
	319,569	Aug.	29.	1901	H. Jung	1,000.00	507.92
	394,920	Sept.	10.	1901	W. Smith	2,000.00	1,566.44
	501,445	Sept.	30.	1901	P. Mundorff	3,500.00	2,738.68
	150,531	Feb.	19.	1901	T. Anderton	1,500.00	799.38
	178,491	Aug.	15.	1901	B. Turner	2,000.00	281.04
	216,612	July	22.	1901	A. Syrersen	1,000.00	519.38
	502,377 502,378	Mar.	15.	1901	W. Thielen	2,000.00	1,521.78
	59,263	Feb.	14.	1899	E. C. Ramsden	10,000.00	6,248.78
	381,256	April	30.	1901	M. A. Elliott	1,000.00	260.00
	142,626	Nov.	6.	1900	P. Gallagher	1,000.00	311.96
	86,529	Aug.	31.	1898	H. Fink	1,000.00	200.00
	349,846 349,847	May	12.	1900	J. D. Lewis	12,000.00	4,400.00
	108,860 91,517	July	7.	1898	G. Radanovich	4,000.00	2,750.00
	332,892	Nov.	24.	1900	J. D. Armstrong	5,000.00	2,500.00
	336,502	Nov.	22.	1900	W. Gaulin	5,000.00	2,900.00
330	380,797	Jan.	19.	1901	N. Willoughby	3,000.00	768.70
	305,969 324,648	Feb.	13.	1901	W. C. Stusak	5,000.00	4,009.68
	127,608	May	6.	1901	F. F. Little	1,000.00	891.49
	124,551	May	30.	1901	F. H. H. O'Flaherty	4,870.00	2,904.60
	16,678 15,336 123,372	June	6.	1901	J. P. Curtis	11,000.00	10,080.61
	165,324	June	16.	1901	E. J. McManus	1,000.00	752.99
	351,477 351,478	July	4.	1901	G. Fanning	2,000.00	1,126.00
	123,511	July	10.	1901	A. H. Rowe	3,000.00	1,868.36
	151,718	July	18.	1901	P. J. Kenney	2,000.00	930.70
	145,702	July	27.	1901	C. Cammer	3,000.00	1,500.00
	306,812	Aug.	20.	1901	J. O. A. Morrison	2,000.00	1,026.40
	135,325	Aug.	28.	1901	L. Booth	5,000.00	3,573.10

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225,473	Sept. 3.	1901	L. F. D. Smith	5,000.00	2,021.93	331
540,045	Aug. 28.	1901	J. A. Cade	2,000.00	1,277.18	
123,940	Aug. 31.	1901	E. S. Proudfoot	5,000.00	3,623.50	
132,267	Sept. 8.	1901	F. Meade	2,500.00	2,034.67	
208,264	Sept. 25.	1901	E. H. Fisher	2,000.00	1,070.42	
387,202	Oct. 6.	1901	A. V. Hamilton	1,000.00	780.15	
541,004	Oct. 4.	1901	G. A. Hoover	1,000.00	375.68	
32,824	Oct. 13.	1901	J. Eaton	10,000.00	8,483.47	
181,244	Nov. 9.	1901	L. H. Traylor	5,000.00	778.70	
15,283	Nov. 2.	1901	J. A. Wildner	1,500.00	1,468.14	
381,264	Nov. 5.	1901	T. F. Jeter	1,000.00	272.99	
5,406	Nov. 15.	1901	P. Morserrat	5,000.00	400.00	
14,204	Nov. 22.	1900	I. Vandercook	3,000.00	1,175.00	
165,132	Aug. 14.	1901	E. Mackin	1,500.00	792.84	
98,337	Feb. 1.	1900	I. J. Smith	1,000.00	675.00	
160,890	July 29.	1900	J. H. Murray	1,000.00	762.20	
360,437	July 31.	1900	W. B. Bennett	1,000.00	400.00	
71,623	June 27.	1901	A. M. Reddick	1,000.00	740.54	
344,060	Mar. 4.	1901	F. Thornton	4,870.00	1,948.00	
157,032	July 3.	1901	W. E. Albertson	5,000.00	3,082.50	332
146,601	July 16.	1901	M. Seiler	1,000.00	615.80	
336,328	Aug. 31.	1901	W. S. Banks	1,000.00	225.00	
406,159	April 12.	1901	J. M. Pearson	1,000.00	200.00	
138,103	Sept. 5.	1901	J. McLeod	10,000.00	8,020.54	
408,152	Sept. 11.	1901	L. R. Read	15,000.00	3,260.25	
135,520	Sept. 17.	1901	C. McPeck	2,000.00	1,228.48	
31,158	Sept. 21.	1901	A. King	5,000.00	4,073.77	
503,238	Sept. 9.	1901	M. M. Kohner	10,000.00	8,967.58	
2,793	Sept. 22.	1901	C. E. Brown	2,000.00	1,250.95	
181,617	Aug. 27.	1901	H. Rodriquez	1,000.00	310.36	
47,506	Sept. 11.	1901	F. S. Whaley	1,000.00	590.14	
201,678	Oct. 5.	1901	J. L. Turcotte	1,000.00	257.82	
135,944	Oct. 23.	1901	W. Van Buren	2,500.00	2,023.61	
387,549	Oct. 31.	1901	P. Costello	5,000.00	2,273.44	
334,585	Nov. 24.	1901	J. Vernon	1,000.00	450.00	
384,362	Dec. 1.	1901	C. Beauvais	1,000.00	646.02	
11,126	Dec. 2.	1901	M. Cannon	2,000.00	1,405.14	
77,387	....	....	S. Nanmburg	10,000.00	500.00	
381,204	....	....	C. H. Borce	1,000.00	200.00	
12,062	....	....	A. G. Strever	5,000.00	750.00	
67,696	....	....	R. McMichael	5,000.00	2,517.00	333
179,793				2,000.00		
334,793	Nov. 19.	1901	C. H. Hamilton	1,000.00	1,764.24	
314,252	....	....	H. Hall	974.00	Nothing!	
43,067	....	....	W. H. Lackman	2,000.00	Nothing!	
349,989	....	....	M. L. C. Villequier	2,400.00	Nothing!	
135,518	....	....	J. R. Scott	5,412.94	Nothing!	
331,405	....	....	G. W. Simmons	15,000.00	Nothing!	
102,743	....	....	A. Murphy	1,000.00	Nothing!	
12,900	....	....	T. M. Hall	1,000.00	Nothing!	
11,264	....	....	H. McQuillan	1,000.00	Nothing!	
			Totals	$960,232.35	$574,436.05	

334 **Exhibit No. 8.**

FINANCIAL STATEMENT.

Assets.

Real Estate, book value	$679,910.96
Mortgage Loans on Real Estate, First Liens	534,150.00
Government, Municipal and other Bonds	435,533.61
Cash Deposited in Banks	812,608.35
Cash in hands of Bonded Collectors	148,678.40
335 Cash in Office	908.87
Premiums in course of transmission	140,527.45
Bills receivable	2,772.29
Interest on Mortgages, due and accrued	5,763.46
Interest on bonds	3,232.17
Interest on other assets	1,273.50
Interest due and accrued, on Premium Notes and Liens	111,889.70
Rents due	4,727.07
Market value of Real Estate over book value	78,560.46
Deferred Premiums on which full 336 year's reserve is charged in liabilities	811,592.57
Liens allowed not exceeding statutory reserve charged as a liability against each policy respectively	2,020,048.02
	$5,792,176.88
Less depreciation in bonds	1,776.05
Total Assets	$5,790,400.83

Liabilities. 337

Net present value of all outstanding policies in force Dec. 31, 1901, as per certificate of New York Insurance Department		$4,057,135.50
Death losses, due and unpaid	$ 28,060.74	
Death losses approved	210,168.95	
Death losses unadjusted	476,726.45	
Death losses reported, no proofs	325,121.15	
Death losses resisted	85,871.81	1,125,949.10
Disability claims		2,100.00
Annuity claims		1,200.00
Unpaid dividends, including those contingent on payment of outstanding and deferred premiums		38,925.54
Salaries, rents, expenses, tax-bills, bonuses, commissions, medical and legal fees, etc		71,292.62
Premiums paid in advance		19,511.25
Liability on lapsed policies on which the Association's liability has not yet terminated		4,095.00
Agents' Credit Balances		3,306.84
Total Liabilities		$5,323,515.35
Excess of Assets (including policy liens) over liabilities		466,885.48
Aggregate		$5,790,400.83

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Respectfully submitted,

ISAAC VANDERPOOL,
Chief Examiner.

340 **Exhibit No. 9.**

WM. HEPBURN RUSSELL. WM. BEVERLY WINSLOW.

Law offices of
RUSSELL & WINSLOW,
Postal Telegraph Building,
253 Broadway,
New York.

FRANK H. WAGGONER. DANIEL M. MIERS.
JOHN E. RUSTON.
Telephone 3362 Cortland

JULY 1, 1902.

MUTUAL RESERVE FUND LIFE ASSOCIATION,
New York City, N. Y.

341 GENTLEMEN:

We are attorneys for the following policy holders in your Association:

J. L. Long, Policy No. 102,851 Call $32.40
F. B. Hamilton, " " 72,199 " 30.15

The notice under which this Call 122 is made comes from the Mutual Reserve Life Insurance Company, a corporation which, for our clients, we do not recognize as having the right to make the call, and to which we deny that our clients are in any manner indebted.

We deny the legality of the attempted re-organization, and in behalf of the above clients we tender
342 to the Mutual Reserve Fund Association, but not to the Mutual Reserve Life Insurance Co., the amount of the above assessments. The bearer of this letter will pay, if received hereunder and in pursuance of the terms stated in this letter.

This tender, and the reception by you of amount herewith tendered, if accepted, is to be understood as waiving no right that said parties have to deny the existence of the Mutual Reserve Fund Association, or the legality of the reorganization above mentioned.

Very truly,
RUSSELL & WINSLOW.

(Endorsed)—Filed January 26, 1903.—John A. Shields, Clerk.

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing certificate was filed and entered of record in my office, on the 28th day of May, 1906, and by direction of the Judges of said Court, said certificate is by me forwarded to the Supreme Court of the United States.

Dated New York, May 28th, 1906.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN,
Clerk of the United States Circuit Court of Appeals for the Second Circuit.

[Endorsed:] United States Circuit Court of Appeals, Second Circuit. Thomas Polk *et al. v.* Mutual Reserve Fund Life Assn. & Mutual Reserve Life Ins. Co. Certificate.

Endorsed on cover: File No. 20,274. U. S. circuit court — appeals, 2d circuit. Term No. 45. Thomas Polk, William I. Moody, James L. Long *et al., vs.* Mutual Reserve Fund Life Association of New York, and Mutual Reserve Life Insurance Comapny. (Certificate.) Filed June 2d, 1906. File No. 20,274.

Supreme Court of the United States,

OCTOBER TERM, 1907.

No. 45.

THOMAS POLK *et al.*

vs.

MUTUAL RESERVE FUND LIFE ASSOCIATION

AND

MUTUAL RESERVE LIFE INSURANCE COMPANY.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

STATEMENT, BRIEF AND ARGUMENT IN BEHALF OF COMPLAINANTS-APPELLANTS.

Statement of the Case.

This case upon the questions certified involves the fundamental question whether a corporation organized under the laws of New York as a purely mutual life insurance society, upon the co-operative or

assessment plan, can be transformed, at a time when it is insolvent, into and re-incorporated as an old line, level premium, legal reserve insurance company, by the action of its directors alone and without the knowledge or consent of its members and policyholders.

It also involves the question whether this pretended reincorporation secretly made by such directors and officers with knowledge of its insolvency and for fraudulent purposes, as against the complainants and other members and policyholders, does, in law, effect a reincorporation of the original society so as to merge that society in the new company, or whether it only has the effect of creating a new and distinct corporation without merging the old society in it as being a reincorporation thereof.

It also involves the question whether an insolvent, purely mutual, co-operative assessment life insurance society can — by the act of its directors alone and without the knowledge or consent of its members and policyholders — be transformed into a corporation of a different class, having different powers and liabilities, and the obligations of whose members are necessarily different.

Incidental to these questions, but of controlling importance in this case, is the inquiry whether such pretended reincorporation can be sustained as valid under a statute, the passage of which was procured by such directors and officers secretly and in fraud of the rights of the members of such mutual society, for the express purpose of enabling such directors to make such reincorporation without the knowledge and consent of the members of said society.

And, finally, is such statute so procured to be passed a violation of the Constitution of the United States as either impairing the obligation of contracts, depriving the members of said society of their vested contract and property rights without due process of law or denying to them the equal protection of the laws?

In short, may a State, at the instance of directors and officers of a purely mutual membership corporation, pass a law under which a reincorporation can be made, by action of the directors alone, and without the knowledge or consent of the members, when the effect of such reincorporation is to work a radical change in the nature of such corporation, the use and reservation of the corporate funds, and the character and nature of the future business and obligations to which the corporation is thereby committed?

Does not such a statute, so applied, deprive the members of such corporation of their vested charter and contract rights without due process of law and deny to them the equal protection of the laws by committing them to new ventures without their consent and changing both their contract rights and obligations?

These are all inquiries that must be put and answered by this Court before it can properly determine the four questions certified to it by the Court below and before answers to these inquiries can be made the undisputed facts shown by the record must be considered and reviewed.

Facts alleged and admitted.

In connection with the questions certified, the Judges of the Circuit Court of Appeals have stated the facts disclosed by the record in so far as they deemed them material to the determination of the questions certified.

Certificate, pp. 1-6.

But, for "the possible convenience of the Court," they transmit a full copy of the amended bill of complaint.

Certificate, p. 5.

It appears from the "statement" made by the Court below that to the amended bill of complaint

the respondents Mutual Reserve Fund Life Association and Mutual Reserve Life Insurance Company interposed demurrers, which were sustained by the Circuit Court, and the bill dismissed; from which ruling an appeal was taken to the Circuit Court of Appeals.

Certificate, p. 1.
Amended Bill, Cert., p. 11.

Hence it follows that the facts pleaded in the amended bill stand admitted as true for all the purposes of this case in the Circuit Court of Appeals and in this Court.

"When a complaint is met by a demurrer on the ground that it does not state a cause of action, the pleading will be held to state all facts that can be implied from the allegations by reasonable and fair intendment, and facts so impliedly averred are traversable in the same manner as though directly stated."

Sage *v.* Culver, 147 N. Y., 241.

"A demurrer is a denial in form and substance of the plaintiff's right to have his case considered in a court of equity, and an admission of all its allegations that are properly pleaded."

Griffing *v.* Gibb, 2 Black, 519.

The District Judge before whom this case was heard in the Circuit Court upon the demurrers, seems to have honored this rule "more in the breach than in the observance" by trying to spell out from the allegations of the amended bill, by way of evidential facts, enough to sustain a dismissal of the bill because it did not sufficiently show the insolvency of respondent corporations.

Polk *v.* Mutual Reserve Fund Life Association, 137 Fed. Rep., 273.

In the Circuit Court of Appeals a different conclusion on the facts admitted by the demurrers must

have been reached, for if the Circuit Court was without equity jurisdiction under the averments of the bill, the decree dismissing it for lack of jurisdiction would have been affirmed, and the certification of the constitutional questions to this Court would have been unnecessary and but an idle ceremony.

This inference is sustained by the decision of the Circuit Court of Appeals reversing a similar ruling on demurrer by the same Judge in another case of analogous character.

> Brown *v.* Equitable Life Ass., Soc., 151 Fed., 1, reversing same case, 142 Fed., 835.

Turning to the amended bill itself, we find the following allegations that seem to be material and relevant upon the constitutional questions certified to this Court:

1. That complainants are members of and policyholders in the Mutual Reserve Fund Life Association in good standing, their memberships ranging from 1886 to 1900.
   Certificate, pp. 12–14.

2. That said association has become insolvent and been deprived of its properties and assets by respondent company, so that its properties have become a trust fund for its creditors and members.
   Certificate, p. 15.

3. That the Mutual Reserve Fund Life Association was incorporated in 1881, under Chapter 267 of the Laws of New York of 1875, and subsequently reorganized in 1883 (before any of complainants became members), under Chapter 175, Laws of New York of 1883.
   Certificate, pp. 18, 19 and 20.

The original and amended certificates of incorporation of the Mutual Reserve Fund Life Association

under the laws above stated are exhibited with the bill and included in the "certificate," and as their provisions are material upon the constitutional questions involved, we invite the attention of the Court to them.

Certificate, pp. 81, 82; (and)
Certificate, pp. 84–87.

It will be seen that the only object of the society, as stated in its original certificate of incorporation, was as follows:

"That the particular business and object of such society is the mutual benefit of ourselves, and all others who may become members of the society by providing benefits for families and others dependent upon such members by means of voluntary contributions to meet exigencies occurring from time to time and to provide a fund for the common and exclusive benefit of all members."

Certificate, p. 82.

And upon the reorganization or first reincorporation in 1883 of the Mutual Reserve Fund Life Association, the amended articles of incorporation recited:

"Whereas, the Mutual Reserve Fund Life Association is an existing corporation or association, transacting business of life insurance upon the co-operative or assessment plan, and incorporated under the laws of the State of New York, and desires to incorporate and re-incorporate under and in pursuance of the provisions of the Act of the Legislature of the State of New York, entitled: 'An Act to provide for the incorporation and regulation of co-operative or assessment Life and Casualty Insurance Associations and Societies,' passed April 2, 1883, and desires to form an organization *for the purpose of transacting the business of life insurance upon the co operative or assessment plan under and in pursance of the provisions of said Act.*"

Certificate, p. 84.

In this amended certificate of incorporation of 1883 the objects and purposes of the corporation were stated and limited as follows:

"We do hereby express our intention to form an organization for the transaction of life insurance *upon the co-operative or assessment plan.*"

Certificate, p. 85.

"The mode and manner in which the corporate powers granted are to be exercised are by issuing certificate of membership, policy or other evidence of interest to, and promise or agreement with its members, *whereby upon the decease of member, money or other benefit, charity, relief or aid is to be paid, provided or rendered by said corporation or association, to the legal representative of such member, or to the beneficiary designated by such member, which money, benefit, charity, relief or aid are derived from voluntary donations, or from admission fees, dues and assessments, or some of them, collected, or to be collected from the members thereof, or members of a class therein* and interest and accretions thereon, or rebates from amounts payable to beneficiaries, or heirs, and wherein the paying, providing or rendering of such money or other benefit, charity, relief or aid is conditioned upon *the same being realized in the manner aforesaid; and wherein the money or other benefit, charity, relief or aid so realized is applied to the uses and purposes of said corporation or association, and the expenses of the management and prosecution of its said business.*"

Certificate, pp. 85, 86.

It will be noted by the Court that neither the original nor amended certificate of incorporation of the Mutual Reserve Fund Life Association contained or reserved any power authorizing the directors to change or amend the articles and certificate of incorporation without the consent of the members and policyholders; and it will be further noted that

both the original and amended certificates of incorporation of the Association as above referred to created *a purely mutual life insurance society "upon the co-operative or assessment plan."*

Certificate, pp. 82, 84, 85, 86.

Hence, as we understand the doctrines of constitutional law, no amendment of the certificate of incorporation changing the character and nature of the corporation, embarking it in a new and different line of business and of life insurance, burdening its members with the creation of a "legal reserve" and "valuing" their policies in a radically different manner and for radically different purposes, could be made except with the consent of the members and policyholders evidenced by corporate action regularly taken upon full notice to them.

Wright *v.* Minnesota Mut. Life Ins. Co., 193 U. S., 657.

That there was no notice to or consent by the members and policyholders in the case at bar (Cert., p. 3) and that the pretended re-incorporation of the Mutual Reserve Fund Life Association, as the Mutual Reserve Life Insurance Co., was secretly made by the directors to cover up their own wrongdoing and for fraudulent purposes, stands admitted upon the face of the record and the allegations of the amended bill.

Certificate pp. 3, 4, 5, 20, 21, 23, 25, 26, 27, 28, 29, 30, 31.

4. That respondent Mutual Reserve Life Insurance Company is a *de facto* corporation organized under Chapter 690 of the Laws of New York of 1892, being that chapter of the General Laws, known as "The Insurance Law" and the amendments thereto, and particularly purporting to be incorporated under § 52 of said Chapter 690 of the Laws of 1892 as said sec-

tion was amended by Chapter 722, Laws of New York of 1901.

Certificate, pp. 20 and 21, fols. 30 and 31.

5. That the alleged reincorporation took place on April 17, 1902, and that the Mutual Reserve Fund Life Association was then and for a considerable time prior thereto had been insolvent.

Certificate, p. 21, fols. 31 and 32.

6. That the officers and directors of said association knowing of its insolvency "devised the scheme for the incorporation of the respondent Mutual Reserve Life Insurance Company and procured legislation intended to authorize the same, with the object and for the purpose of secretly and fraudulently 'depriving complainants and the other members and policyholders of respondent association of their membership rights and privileges and of abridging the same, and that by their said course in the premises said officers and directors sought and intended to defraud the complainants and the members and policyholders of said association generally and sought and intended to deprive them of their rights as members and policy holders or to cause a forfeiture of the same.'"

"Statement" by C. C. A., Cert., p. 4.
Amended Bill, Pars. VIII. and IX.
Certificate, pp. 20–31.

7. That the specific fraudulent practices and acts of the directors and officers of said association which they sought to cover up through the reincorporation in 1902 as well as the insolvency of the association and of the Mutual Reserve Life Insurance Company are well pleaded in the bill, can scarcely be denied in view of the allegations in the bill itself and the adoption of those allegations as facts in

the "Statement" from the Circuit Court of Appeals.

"Statement," Certificate, pp. 3, 4 and 5.
Amended Bill, Cert., pp. 20-27; 28-31; 33-35; 40-43; 47-54; 63-65; 65-73.

8. That even after the pretended reincorporation as Mutual Reserve Life Insurance Company they purposely kept their members in ignorance of what had been done and sought to perpetrate frauds upon them under the guise of "lien charges," is well evidenced by the correspondence of one of the complainants, Hon. D. L. Snodgrass, lately Chief Justice of the Supreme Court of Tennessee, with the managing officers of the company.

Exhibits 5 and 6 to Amended Bill, Certificate, pp. 99-103.

9. That they habitually practiced frauds upon their members is demonstrated by the allegations of the amended bill upon the subject of the charging of alleged "liens" against the policies of members upon the books of the association and the company.

Amended Bill, Cert., pp. 41-42; fols. 92, 93, 94 and 95.
Letter to D. L. Snodgrass, Cert., p. 102; fols. 274, 275.

And so upon the beneficiaries of policies, the objects of the care and solicitude of their members, they practiced even worse frauds by first contesting without cause and then scaling down without conscience the amount to be paid such beneficiaries, hoping thereby to conceal at once the corporate insolvency and their own gross derelictions of duty.

"Statement," Certificate, p. 4.
Amended Bill, Certificate, pp. 33-35, Par. XI. of Bill.
Exhibit No. 7 1/2, Certificate, pp. 116-121.

The substance of all these allegations being embodied in the "Statement" made by the Circuit Court of Appeals, and the amended bill being referred to in that "Statement" (Certificate, pp. 4 and 5), it seems unnecessary to further elaborate our statement of the case; and the facts thus shown to exist standing admitted by the demurrers of respondents, we now proceed to consider the law of the case as we understaud the law to be in the following brief and argument in support thereof.

Brief upon Points of Law.

I.

THE ORGANIZATION OF THE MUTUAL RESERVE LIFE INSURANCE COMPANY BY ACTION OF THE DIRECTORS AND OFFICERS OF THE MUTUAL RESERVE FUND LIFE ASSOCIATION, ACTING WITHOUT THE KNOWLEDGE OR CONSENT OF THE MEMBERS AND POLICYHOLDERS OF THE ASSOCIATION, AT A TIME WHEN THE ASSOCIATION WAS INSOLVENT, AND UNDER A LAW THE PASSAGE OF WHICH THEY PROCURED IN FRAUD OF SUCH MEMBERS AND POLICYHOLDERS, HAD THE EFFECT OF DEPRIVING THE COMPLAINANTS AND OTHER MEMBERS AND POLICYHOLDERS OF THEIR PROPERTY WITHOUT DUE PROCESS OF LAW, OF IMPAIRING THE OBLIGATION OF THEIR CONTRACTS OF MEMBERSHIP AND OF DENYING TO THEM THE EQUAL PROTECTION OF THE LAWS.

Huber *v.* Martin, 127 Wis., 412; S. C., 115 Am. St. Rep., 1023.
Zabriskie *v.* Hackensack, &c., R. Co., 18 N. J. Eq., 174.
Railway Co. *v.* Allerton, 18 Wall., 233.
Baker's Appeal, 109 Pa. St., 461.
Hartford & New Haven R. Co. *v.* Croswell, 5 Hill (N. Y.), 383, 386.

Schwarzwaelder *v.* German Mut. Fire Ins. Co., 59 N. J. Eq., 589.

People *v.* Ballard, 134 N. Y., 269, at pp. 294–297.

1 Morawetz on Corp. (2d Ed.), §§ 295, 296, 395, 396, 397, 404, 406, 512, 514.

The case of *Huber* v. *Martin*, first above cited, is so nearly analogous, upon its facts, to the case at bar—except that in the pending case *insolvency* and *fraud* are additional factors—that we regard it as of great interest and importance, because of the admirable way in which it states and reasons out the very principles for which we contend.

We also regard the leading case decided by this Court on some of the questions arising in the case at bar as a controlling authority against the right of the *directors* of the Mutual Reserve Fund Life Association to (*a*), procure legislation authorizing a mutual life insurance society, organized upon the assessment plan, to change to a level premium, old line company upon the application of the directors alone; and (*b*), to make the change under such law, without the knowledge or consent of the members, at a time when the association was already insolvent.

Wright *v.* Minnesota Mutual Life Insurance Co., 193 U. S., 657.

The distinctions between the Wright case and the case at bar which make that case an authority for complainants in this case seem manifest, but we call attention to the following points of contrast:

In the Wright case the charter contained an express reservation of the power of amendment (193 U. S., 664, 665), while in the case at bar the certificate of incorporation of the Mutual Reserve Fund Life Association contained no such reservation (*ante*, pp. 7 and 8; Cert., pp. 82, 84–86). Hence the corporation, by acts of its directors alone, could not

make a change in the corporate charter transforming the co-operative assessment association into an old line, level premium, legal reserve, valued policy company.

In the Wright case the change was approved by a majority of the members and policyholders through corporate action regularly taken by them (193 U. S., 664), while in the case at bar not only did the members and policyholders not consent, but they had no notice of the pretended reincorporation until long after it had been effected, and then only by the new form and changed amount of a call made upon them (*ante*, pp. 8-10; Certificate, pp. 4, 10, 97-98; 99-103).

In the Wright case the power of amendment expressly reserved in the original charter was exercised in good faith by the corporation when it was solvent through the action of its members, a majority of whom approved the change in accordance with the laws of Minnesota (193 U. S., 664, 665), while in the case at bar an insolvent association, whose original charters contain no such reservation, was reincorporated, without the knowledge or consent of its members, by the action of its directors alone, and under a law which such directors—then guilty of fraudulent practices against the association and its members—caused to be passed, in order that they might exercise the power of change and reincorporation, without the knowledge and in fraud of the rights of members (*ante*, pp. 8 and 9; Certificate, pp. 1, 2, 3, 4; Amended Bill, Cert., pp. 20-28; 28-33; Pars. VIII. and IX.).

In the light of these contrasts and differences of fact, is it not true that the *Wright case* is an authority in support of our contention that the pretended reincorporation of the Mutual Reserve Fund Life Association as the Mutual Reserve Life Insurance Company was illegal, invalid and unconstitutional, and does not the case of *Huber* v. *Martin*, *supra*, state the law of this case as it will be applied by this Court upon the admitted facts certified up by the Circuit Court of Appeals?

II.

DIRECTORS OF A MUTUAL MEMBERSHIP CORPORATION HAVE NO POWER, WITHOUT THE AUTHORITY AND CONSENT OF THE MEMBERS, TO ALTER, AMEND AND CHANGE THE CORPORATE CHARTER EITHER BY THEIR OWN ACTS, OR PURSUANT TO LEGISLATION, PROCURED UPON THEIR INITIATIVE, FOR SUCH PURPOSE.

Marlborough Mfg. Co. *v.* Smith, 2 Conn., 579, 583, 584.
1 Morawetz on Corp. (2d Ed.), §§ 295, 297, 395, 397, 512-514.

"It is clear that the directors of a corporation can under no circumstances make or accept an alteration of the company's charter, unless the power to do this is expressly conferred upon them by a provision contained in the charter itself."

1 Morawetz on Corporations (2d Ed.), § 514.

"The general powers, given by the charter of a manufacturing company, to the directors, to manage the stock, property and affairs of the corporation, do not enable them to apply to the Legislature for an enlargement of the company's powers; and a resolve, passed on such application, without any authority from the company, is void."

Marlborough Mfg. Co. *v.* Smith, 2 Conn., 579, 583, 584.
Railway Co. *v.* Allerton, 18 Wall., 233.
Baker's Appeal, 109 Pa. St., 461.

If this be so, then it applies with double force in the case of an insolvent corporation, on whose members its directors are practising frauds, and where the legislation is procured and the action

taken in furtherance of such frauds or to conceal them, as in the case at bar.

So. Pennsylvania Iron & R. Co. *v.* Stevens, 87 Pa. St., 190, 196.
Edwards *v.* Mercantile Trust Co., 124 Fed. Rep., 382, 392.

"It is quite true that to charge that parties have complied with an act of the Legislature would not indicate fraud, but the contrary. This does not apply in this case, however, for to knowingly proceed under an act of the Legislature known to be invalid, for the purpose of cheating and defrauding the stockholders of the company would constitute actionable fraud if a fraud were actually perpetrated."

Edwards *v.* Mercantile Trust Co., 124 Fed. Rep., 381, 392.

III.

THE RESERVED POWER OF THE LEGISLATURE TO "AMEND, ANNUL OR REPEAL" ANY INCORPORATIONS FORMED UNDER ACTS OF THE LEGISLATURE IN WHICH SUCH RESERVATION IS MADE DOES NOT AUTHORIZE THE DIRECTORS OF A MUTUAL CORPORATION ORGANIZED UNDER SUCH AN ACT TO PROCURE GENERAL LEGISLATION UNDER WHICH THEY CAN APPLY FOR AND OBTAIN A REINCORPORATION OF THE COMPANY WITHOUT THE KNOWLEDGE AND CONSENT OF ITS MEMBERS AND IN CHANGE AND VIOLATION OF THEIR CONTRACT RIGHTS AND OBLIGATIONS AS BETWEEN THEMSELVES.

Taylor on Corporations (5th Ed.), §§ 499, 500.
Railway Co. *v.* Allerton, 18 Wall., 233, 235, 236.

Baker's Appeal, 109 Pa. St., 461, 471, 472.

Zabriskie *v.* Hackensack, &c., R. Co., 18 N. J. Eq., 178; s. c., 90 Am. Dec., 617.

Botts *v.* Simpsonville, &c., Co., 88 Ky., 54; S. C., 2 L. R. A., 594.

Huber *v.* Martin, 115 Am. St. Rep., 1023, 1027, 1037, 1041, 1043, 1044, 1045, 1046.

Black *v.* Delaware, &c., Canal Co., 24 N. J. Eq., 455, 466–468.

Mills *v.* Central R. Co., 41 N. J. Eq., 1, 4, 5, 8.

In this case it is not even claimed in behalf of respondents that the certificate of incorporation of the Mutual Reserve Fund Life Association, either in its original form or as it was amended in 1883, contained any reserved power of amendment or alteration under which the directors, without the knowledge or consent of the members, could cause a reincorporation of a co-operative assessment society, so as to transform it into an old line, level premium, legal reserve company, governed by radically different laws and conducting a different business upon a different method.

The only claim of respondents is that under the general reservation of legislative power to "amend, annul or repeal," the Legislature could subsequently pass a general law under which the directors of the association could cause a reincorporation of such nature *without the knowledge or consent of the members.*

We—on the other hand—deny that under the general legislative reservation of power to "amend, annul or repeal," the Legislature could by a subsequent general enactment, only permissive in its terms, clothe the directors with power to make such reincorporation, thereby changing and extending the business of the corporation, and changing

the obligation of the contracts of members *as between themselves* without their consent.

We emphasize this denial of the existence of this power with the facts disclosed by the record in this case, that the directors themselves procured the enactment of Ch. 722 of the Laws of 1901, under which they then proceeded to make the reincorporation (thereby merely *permitted*, not *required*), without the consent of the members, and that they did this to cover up their previous fraudulent practices and the insolvency of the company and with the object of defrauding the members, abridging their rights and causing a forfeiture of their memberships (*ante*, pp. 8, 9 and 10, Cert., pp. 4 and 5).

The Mutual Reserve Fund Life Association, at the time of its pretended reincorporation as the Mutual Reserve Life Insurance Company, was governed and controlled by Chapter 175 of the Laws of New York of 1883, under which it was organized, entited "An Act to provide for the incorporation and regulation of co-operative or assessment life and casualty insurance associations and societies." Section 16 of that act, which was in full force and effect at the time of the pretended reincorporation in 1902, expressly provided that "every such association, corporation or society, other than secret fraternal societies, now authorized as aforesaid to do business in this State *must hereafter, before the adoption of any by-law or amendment thereto*, cause the same to be mailed to the members and directors of such association, society or corporation, together with a notice of the time and place when the same will be considered, which notice shall be the same as hereinbefore required for a stated meeting."

Surely, then, when the very act under which the Mutual Reserve Fund Life Association had its corporate existence, forbade even an amendment of the corporate by-laws without notice thereof to the several members and action by the members in a regu-

larly called corporate meeting, it must be true that the legislative purpose in the entire act was to forbid material and radical changes in the corporate charter except with the consent of the members and policyholders, and upon full notice to them; hence action taken by the directors alone, secretly and without notice to the policyholders, procuring legislation intending to permit them to apply for and cause material changes in the corporate powers, should be held invalid and void.

Railway Co. *v.* Allerton, 18 Wall., 233.
Baker's Appeal, 109 Pa. St., 461.

Legislative Enactments Reviewed.*

Chapter 175 of the Laws of New York of 1883, under which the Mutual Reserve Fund Life Association was organized and by which it was governed, contained no provision authorizing the transformation of associations organized under it into old line-life insurance companies, and when the chapter of the general laws (Chapter 690, Laws of 1892), known as the "Insurance Law," was adopted, that law contained no provision under which the Mutual Reserve Fund Life Association could become incorporated as an old line level premium company. § 52 of that law, at the time of its enactment in 1892, read as follows:

"Any domestic insurance corporation existing or doing business at the time this chapter takes effect, *and not incorporated under any law repealed by this chapter*, may, by a vote of a majority of its directors, accept the provisions of this chapter and amend its charter to conform with the same upon obtaining the consent of the Superintendent of Insurance

* In an appendix, under a separate cover, we have taken from our brief in the Court below copies of all New York statutory provisions cited which seem to be material; also a summary of the policies of all of the complainants.

thereto in writing and thereafter it shall be deemed to have been incorporated under this chapter."

Laws of New York, 1892, Vol. 2, Ch. 690. Appendix, pp. 9, 10.

As stated by counsel for respondents in their brief in the Circuit Court of Appeals in this case: "Among the many laws of the State of New York which were repealed by Chapter 690 of the Laws of 1892 was Chapter 175 of the Laws of 1883" (Respondents' Brief in Circuit Court of Appeals, p. 33). And in that brief respondents' counsel adds: "So it may be, that, in view of the words contained in § 52 of the Laws of 1892, as originally enacted, limiting the application of that section to corporations 'not incorporated under any law repealed by this chapter,' the Mutual Reserve Fund Life Association *could not have availed itself* of the provisions of § 52 of the Insurance Law as enacted in 1892 in case it had desired to reincorporate thereunder" (Respondents' Brief in Circuit Court of Appeals, p. 34).

In 1893, the Legislature of the State of New York did make provision for the reincorporation of "all insurance companies transacting business on the co-operative or assessment plan" authorizing them "to reincorporate as a stock corporation" under their existing corporate names.

Laws of New York, 1893, Vol. 2, Ch. 690. Appendix, pp. 20, 21.

And in this act, which is the only act of the Legislature of the State of New York passed after the enactment of Chapter 175 of the Laws of 1883 authorizing any reincorporation of insurance companies transacting business on the co-operative or assessment plan prior to the enactment of Chapter 722 of the Laws of 1901 for the purposes shown by the record in this case, the Legislature expressly enacted that "before the Superintendent of Insurance shall

be required to file and record a certificate of such reincorporation, he shall be satisfied that the same has been approved *by a majority vote of the members of the company* present and voting at a meeting of the insured called to consider the same, of which meeting a written or printed notice shall have been mailed to each member who shall have been such for thirty days, directed to his address appearing on the company's books at least thirty days before the day for such meeting."

Laws of New York, 1893, Vol. 2, Ch. 690, § 2. Appendix, p. 21.

Article VI. of the Insurance Law, Chapter 690 of the Laws of 1892, in substance and effect took the place and was a re-enactment of Chapter 175 of the Laws of 1883 which the Insurance Law expressly repealed, and this article, relating to and governing "insurance corporations upon the co-operative or assessment plan" *contained no provision for the reincorporation of such associations as level premium old line companies*, but (by § 206) limited the reincorporation of such associations to reincorporations (under their existing names) as co-operative assessment societies establishing a reserve or emergency fund under § 205 of the Insurance Law contained in said Article VI.

Laws of New York, 1892, Vol. 2, Ch. 690, Art. VI, §§ 205, 206. Appendix, pp. 16–19.

The only amendment of § 52 of the Laws of New York of 1892, known as the "Insurance Law," prior to the enactment of Chapter 722 of the Laws of 1901, here complained of, was by Chapter 725 of the Laws of New York of 1893 and the first section of this amending act of 1893, provided that "The following sections of the Insurance Law are amended to read respectively as follows, to take effect immediately; *and nothing in any of the fol-*

lowing sections shall apply to any insurance corporation organized under Articles VI. and VII. of the Insurance Law."

Laws of New York, 1893, Vol. 2, Ch. 725, § 1. Appendix, pp. 21, 22.

Therefore, the revision of § 52 of the Insurance Law by Chapter 725 of the Laws of 1893, just quoted, did not apply to and would not permit the Mutual Reserve Fund Life Association, because it was an organization existing under Article VI. of the Insurance Law, to reincorporate under the provisions of § 52 as amended by Chapter 725 of the Laws of 1893.

Laws of New York, 1893, Vol. 2, Ch. 725, §§ 1, 52. Appendix, pp. 21-23.

Counsel for respondents in their brief in the Circuit Court of Appeals, somewhat disingenuously, tried to make it appear that the amendment of § 52 of the Insurance Law by Chapter 725 of the Laws of 1893 just referred to "was broad enough to include the corporation with which we are dealing.' They probably overlooked the express proviso of § 1 of Chapter 725 preventing the application of any amendment made by that chapter "to any insurance corporation organized under Articles VI. and VII. of the Insurance Law."

It follows, from the foregoing review of the statutory provisions regulating insurance corporations of the State of New York organized upon the co-operative or assessment plan, that up to the time of the enactment of Chapter 722 of the Laws of 1901 there was no authority for the reincorporation of such an association as an old-line level premium company, and that the only legislation authorizing a reincorporation as a new company of any kind was Chapter 690 of the Laws of 1893 authorizing a reincorporation as a stock corporation under the existing corporate name, *but this right was made contingent upon the approval of a*

majority vote of the members of the company after full notice.

Laws of New York, 1893, Vol. 2, Ch. 690. Appendix, pp. 20, 21.

Counsel for respondents in their brief and argument below were unable to see why we cited and referred to this Act of 1893. Our answer is, to show the legislative policy requiring notice to the members before a reincorporation would be permitted, which policy is also clearly shown by the provisions of § 16 of Chapter 175 of the Laws of 1883, requiring notice to the members before amendments of the by-laws.

Laws of New York, 1883, Ch. 175, § 16. Appendix, p. 8.

Which provision was carried forward into Article VI. of the "Insurance Law" of 1892, and was a part of that article of that law in 1902 at the time of the pretended reincorporation of the Association as the Mutual Reserve Fund Life Insurance Company.

Laws of New York, 1892, Vol. 2, Ch. 690, § 209. Appendix, p. 19.

This brings us to the provisions of Chapter 722 of the Laws of New York of 1901. This act is entitled "An Act to amend Article I., § 52 of Chapter 690 of the Laws of 1892 *as amended by Chapter 725 of the Laws of 1893*, constituting Chapter 38 of the General Laws and known as the 'Insurance Law.'"

By the very title of this act it is limited to an amendment of § 52 of the Insurance Law of 1892 as amended by Chapter 725 of the Laws of 1893 above referred to and quoted, and we raise the question whether, so entitled, it can be held to apply, under any circumstances, to insurance corporations upon the co-operative or assessment plan organized under Chapter 175 of the Laws

of New York of 1883, and continuing to exist and be governed by Article VI. of the Insurance Law, Chapter 690 of the Laws of 1892, or must it be held that Chapter 722 is restricted by the provision of § 1 of Chapter 725 of the Laws of 1893 in this, that it does not and cannot be held to apply to insurance corporations upon the co-operative or assessment plan governed by Article VI. of the Insurance Law.

See § 1, Chapter 725, Laws of 1893. Appendix, pp. 21, 22.

Whether this be so or not—and the point just stated is here raised for the first time- it is, we think, manifest that prior to the enactment of Chapter 722 of the Laws of 1901 there was no pretense of any existing authority under which the Mutual Reserve Fund Life Association could have reincorporated as the Mutual Reserve Life Insurance Company for the purpose of transacting business as an old line level premium company with all the powers, rights and added burdens and obligations placed upon old line level premium insurance companies by Articles I. and II. of the Insurance Law.

Laws of 1892, Ch. 690, Arts I., II., as to which, see particularly §§ 70, 83, 84, 85, 86 of Art. II. of said law. Appendix, pp. 11-14.

We, therefore, upon the foregoing analysis of the legislation of the State of New York bearing upon the questions at issue, insist:

FIRST.—That no amendment of the charter, or reincorporation of the Mutual Reserve Fund Life Association as an old line level premium company, could be lawfully made by the action and upon the application of its directors alone.

SECOND.—That Chapter 722 of the Laws of New York, of 1901, purporting to confer such power per-

missively upon the directors, was if held to apply to the reincorporation of insurance corporations conducting their business "upon the co-operative or assessment plan," a law impairing the obligation of contracts and depriving such corporations and their members of their property without due process of law in this, that it placed additional burdens and liabilities upon the members of such associations without their consent, and extended the business of the corporation to new and different lines upon new and different methods to which the members of a purely mutual assessment corporation could not be committed without their own consent and in violation of their membership rights.

THIRD.—That Chapter 722 of the Laws of 1901 is governed by the limitations of § 1 of Chapter 725 of the Laws of New York of 1893, and, therefore, did not and does not apply to the reincorporation of associations existing or continuing their existence under Article VI. of Chapter 690 of the Laws of 1892, known as the "Insurance Law."

Respondents' counsel, in their brief below, expressly admitted that "the Mutual Reserve Fund Life Association was a corporation subject to Article VI. of the Insurance Law, that is, it was a corporation doing business on the co-operative or assessment plan, such as is most fully defined by the first two sections of Article VI. of the Insurance Law of New York, §§ 200, 201."

Brief for Respondents in Circuit Court of Appeals, p. 35.

Presumably the same contentions and the same admissions which we have above quoted from the brief of respondents in the Circuit Court of Appeals will be repeated in this court, as the respondents are here represented by the same able and learned counsel.

Having thus analyzed and reviewed the legislation of the State of New York applicable to this

controversy under this proposition of our brief, we now submit the following additional authorities as relevant and controlling in the light of the foregoing statutory history and enactments:

"A power reserved to the Legislature, to alter, amend or repeal a charter authorizes it to make any alteration or amendment of a charter granted subject to it, which will not defeat or substantially impair the object of the grant, *or any rights vested under it*, and which the Legislature may deem necessary to secure either that object or any public right. * * * In the exercise of such a power by the United States, as was observed by the Chief Justice in delivering the opinion of the court in the *Sinking Fund Cases*, 'it is not only their right, but their duty, as sovereign, to see to it that the current stockholders do not, in the administration of the affairs of the corporation, appropriate to their own use that which in equity belongs to others.'"

Close *v.* Glenwood Cemetery, 107 U. S., 466, 476.
New York, etc., R. R. Co. *v.* Bristol, 151 U. S. 556, 567.

"There is a strong tendency in the decisions, and a tendency which is deserving of the highest commendation, to limit the power of the Legislature to amend a charter under this reserved power. It should be restricted to those amendments only *in which the State has a public interest.* Any attempt to use this power of amendment for the purpose of authorizing a majority of the stockholders to force upon a minority a material change in the enterprise, is contrary to law and the spirit of justice."

2 Cook on Corp. (4th Ed.), § 501.

"By the reservation in the Law of 1831, which is to be considered as if embodied in that act, the State retained the power to alter it in all particulars constituting the grant to the new company, formed

under it, of corporate rights, privileges and immunities. The existence of the corporation, and its franchises and immunities, *derived directly from the State*, were thus kept under its control. Rights and interests acquired by the company, *not constituting a part of the contract of incorporation*, stand upon a different footing."

Railroad Co. *v.* Maine, 96 U. S., 499, 510.

"These cases also hold that there is a limitation, even to the power of amendment when reserved in the constitution or a statute of a State. Some of the cases, although holding that the power to amend or repeal was properly exercised in them, also state that the power is not without limit; *that the alterations must be reasonably made, in good faith and consistent with the scope and object of the act of incorporation*, and that sheer oppression and wrong could not be inflicted under the guise of amendment or alteration; that beyond the sphere of the reserved powers the vested rights of property in corporations in such cases is surrounded by the same sanction and are as inviolable as in other cases."

Stanislaus *v.* San Joaquin, etc., Canal, etc., Co., 192 U. S., 201, 213.
Shields *v.* Ohio, 95 U. S., 319, 324.

"When, under power in a charter, rights have been acquired and become vested, no amendment or alteration of the charter can take away the property or rights which have become vested under a legitimate exercise of the powers granted."

People *v.* O'Brien *et al.*, 111 N.Y., 1, 52.
Commonwealth *v.* Essex Co., 13 Gray, 239.

"The German Mutual Fire Insurance Company was organized under our general laws, in 1893, and the complainant became a member of it in 1898. As we have seen, the company had then no power to

change itself into a joint stock company. The complainant's right to membership was one of the benefits accruing to her from her contract of insurance in the company. Of this benefit the company had no power to deprive her, except in the mode provided by the contract itself. The Act of March 6, 1899, if enforced against the complainant, would impair the obligation of her contract by enabling the company to take from her a right derived from her contract with it, in a method not authorized by the contract. Such a law would be unconstitutional and void. Although the act under which the company was organized is subject to amendment, alteration and repeal by the Legislature, yet such amendment, alteration or repeal can be effected only by the legislative power of that body, and its legislative power does not extend to the enactment of a law which impairs the obligation of a legal contract previously made."

Schwarzwaelder *v.* German Mut. Fire Ins. Co., 59 N. J. Eq., 589, 594.

"The Legislature may alter or amend the charter of a corporation, but cannot legitimately appropriate its property without the consent of all its members, either to its own use or that of a private party, though such party be a successor corporation, in the absence of some authorization to the contrary in the charter originally."

Huber *v.* Martin, 127 Wis., 412; s. c., 115 Am. St. Rep., 1023, 1038.

"Where a railroad company by a vote of a majority of the stockholders, but without legislative authority, leased its road to another, it was held that the transaction was not valid as against the minority, although the Legislature subsequently ratified and confirmed it."

Mills *v.* Central R. R. Co., 41 N. J. Eq., 1, 5.

IV.

CHAPTER 722 LAWS OF NEW YORK OF 1901 IS UNCONSTITUTIONAL AND VOID AND THE PRETENDED RE-INCORPORATIN OF THE MUTUAL RESERVE FUND LIFE ASSOCIATION UNDER ITS PROVISIONS IS INVALID, BECAUSE IT IMPAIRS THE OBLIGATION OF CONTRACTS BETWEEN A MUTUAL CO-OPERATIVE ASSESSMENT LIFE INSURANCE SOCIETY AND ITS MEMBERS BY CONFERRING POWER UPON THE DIRECTORS OF THE CORPORATION, WITHOUT THE ACTION, KNOWLEDGE OR CONSENT OF THE MEMBERS, TO CHANGE THE CORPORATION INTO AN INSURANCE COMPANY OF A DIFFERENT CLASS, WITH DIFFERENT BURDENS RESTING UPON IT AND THROUGH IT UPON ITS MEMBERS.

3, Thompson on Corp., §§ 3979, 3980.
Railway Co. *v.* Allerton, 18 Wall., 233.
Baker's Appeal, 109 Pa. St., 461.
Marlborough Mfg. Co. *v.* Smith, 2 Conn., 579, 583, 584.
Venner *v.* Atchison, Topeka & Santa Fe R. Co., 28 Fed. Rep., 581, per Brewer, *C. J.*
Mayor, etc., *v.* Knoxville & O. R. Co., 22 Fed. Rep., 758, p. Baxter, *C. J.*

"The invalidity of a State law as impairing the obligation of contracts does not depend upon the extent of the changes which the law effects in the contract."

Green *v.* Biddle, 8 Wh., 1, 2.

" All the authorities in this State are uniform in holding that the trustees of a corporation cannot so dispose of its property as to virtually end its existence and prevent it from carrying on the business for which it was incorporated."

People *v.* Ballard, 134 N. Y., 269, 296.

"Changes in the purpose and object of an association, or in the extent of its constituency or membership, involving the amount of its capital stock, are necessarily fundamental in their character, and cannot, on general principles, be made without the express or implied consent of the members. The reason is obvious. First, as it respects the purpose and object. This may be said to be the final cause of the association, for the sake of which it was brought into existence. To change this without the consent of the associates would be to commit them to an enterprise which they never embraced, and would be manifestly unjust. Secondly, as it respects the constituency, or capital and membership. This is the next most important and fundamental point in the constitution of a body corporate. To change it without the consent of the stockholders would be to make them members of an association in which they never consented to become such. It would change the relative influence, control and profit of each member. If the directors alone could do it they could always perpetuate their own power. Their agency does not extend to such an act unless so expressed in the charter, or subsequent enabling act, and such subsequent act, as before said, *would not bind the stockholders without their acceptance of it, or assent to it in some form.*"

Railway Co. *v.* Allerton, 18 Wall., 233, 235.

"On behalf of appellees it is contended that the provisions of the new constitution were *duly accepted by the Board of Directors*, and thus became substantially a part of the charter; and, if there should be any doubt as to the authority of the board to do what they did, their action in the premises was subsequently approved by a *majority* of the stockholders present at the last annual meeting in June, 1884. In view of the duties and powers of the directors as specified in the charter, we have no hesitation in saying it was not within the scope of

their authority to accept the provisions of the present constitution relating to the subject of cumulative voting. They had no power, express or implied, to surrender, as they undertook to do, the vested rights of their constituents. Their action was not only without authority, but it was manifestly designed to deprive the majority in interest of the stockholders of the right guaranteed to them by their charter. Directors, clothed as they were merely with the ordinary powers of executive management, are powerless to effect a radical change in the charter rights of stockholders contrary to the wishes and against the objection of a majority in interest."

Baker's Appeal, 109 Pa. St., 461, 471, 472.

"The defendants insist that the charter of the Central, having been granted after the passage of the general corporation law * * * by the sixth section of which it is provided that the charter of every corporation which shall thereafter be granted by or created under any of the acts of the Legislature, shall be subject to alterations, suspension and repeal in the discretion of the Legislature, the provision of the Act of 1880 in regard to leasing, &c., is to be regarded as incorporated in the charter itself; and that, if so, that act authorized the company to make the lease, and the directors, acting for the company and being its duly constituted agents, could lawfully and effectually (especially with the assent of a majority of the stockholder) execute the power. But notwithstanding that provision of the general corporation law, subsequent legislation prejudicial to the vested rights of stockholders as between themselves, is not, so far as such rights are concerned, to be regarded as having constructively existed from the passage of the charter and is invalid."

Mills *v.* Central R. R. Co., 41 N. J. Eq., 1, 8.

"In that case (Abbott *v.* American Hard Rubber Co., 33 Barb., 578) a majority of the trustees of a business corporation, without the consent of some of the stockholders, transferred all its personal property which was especially adapted to its business, to two persons, who forthwith caused another corporation to be formed, and transferred such property to it. It was held that, as such transfer practically terminated the corporation by taking from it the power to fulfill the object of its organization, it was a violation of that object, was not within the power of the trustees, and was hence void as *ultra vires*. The case was elaborately considered both at General and Special Term, and we regard it as a sound and valuable authority."

People *v.* Ballard, 134 N. Y., 269, 294, 295.

"In that case (Zabriskie *v.* Hackensack & N. Y. R. R. Co., 14 N. J. Eq., 178), referring to the above mentioned provision for alteration, amendment or repeal, and to a like one in the charter of the company itself, the Chancellor said that the object and purpose of that provision were so plain, and so plainly expressed in the words, that it seemed strange that any doubt should be raised concerning them; that the provision *was a reservation to the State for the benefit of the public*, to be exercised by the State only; that the State was making what had been decided to be a contract, and it reserved the power of change by altering, modifying or repealing the contract, and that neither the words nor the circumstances nor the apparent object for which the provision was made could, by any fair construction, *extend it to giving a power to one part of the corporators* as against the other, which they did not have before."

Mills *v.* Central R. R. Co., 41 N. J. Eq., 1, 8.

V.

THE CHANGE MADE IN THE NATURE AND BUSINESS OF THE MUTUAL RESERVE FUND LIFE ASSOCIATION BY ITS PRETENDED RE-INCORPORATION AS THE MUTUAL RESERVE LIFE INSURANCE COMPANY, WHEREBY IT WAS TRANSFORMED FROM A MUTUAL LIFE INSURANCE SOCIETY ON THE CO-OPERATIVE OR ASSESSMENT PLAN TO AN OLD LINE, LEVEL PREMIUM COMPANY, ITS POLICIES "VALUED" AND A "LEGAL RESERVE" CREATED, WAS FUNDAMENTAL, AND NO POWER OF AMENDMENT BY THE DIRECTORS BEING RESERVED IN ITS CHARTER, THE PRETENDED RE-INCORPORATION UNDER CHAPTER 722, LAWS OF 1901 OF NEW YORK, BY THE ACTION OF THE DIRECTORS ALONE, IS UNCONSTITUTIONAL AND INVALID AND HAS THE EFFECT OF IMPAIRING THE OBLIGATION OF CONTRACTS WITH ITS MEMBERS AND DEPRIVING THEM OF THEIR PROPERTY WITHOUT DUE PROCESS OF LAW.

Bedford *v.* Eastern B. & L. Ass'n, 181 U. S., 227, 240-241.
Chapter 175, Laws of N. Y. of 1883, § 16.
Chapter 690, Laws of N. Y. of 1892, § 209.
Chapter 690, Laws of N. Y. of 1893, §§ 1 and 2.
Lord *v.* Equitable Assurance Soc., 109 App. Div. N. Y., 252.

The case of *Lord* v. *Equitable*, just cited, deals with a stock corporation, but otherwise, and in principle, its doctrines are the same as those we insist upon in the case at bar. It reviews many of the same statutory provisions which in later portions of this brief we discuss, and interprets and ap-

plies them substantially as we here insist that they should be interpreted and applied. Therefore, we regard the case as very persuasive in support of our contentions, for it has often been held that membership in a mutual, co-operative, assessment company places the members of such company substantially in the status of stockholders.

Boyd *v.* Mutual Fire Assn., 116 Wis., 115; s. c. 96 Am. St. Rep., 948, 953, 954.

Ervin *v.* Oregon River & Nav. Co., 27 Fed. Rep., 625, 631.

"Whether an amendment materially changes the corporate plans or not is a question of law for the Court. Accordingly each case is to be decided according to the peculiar circumstances of that case. No general rules can be laid down which will apply to all cases."

2 Cook on Corp., § 499.

Winter *v.* Muskogee R. R. Co., 11 Ga., 488.

Wright *v.* Minnesota Mut. Life Ins. Co., 193 U. S., 657, 663.

"A material and fundamental change in the charter by an amendment to that charter is an unconstitutional violation of the contract rights of any stockholder who does not assent to such an amendment."

2 Cook on Corp. (4th Ed.), § 500.

"The change in the charter of a 'life and accident' insurance company, whereby such company is also authorized to transact the business of 'fire, marine, and inland insurance,' is of such a radical character as to discharge previous subscribers, who do not assent to the change, from liability to pay future assessments on their stock."

Ashton *v.* Burbank, 2 Dillon, 435, Opinion per Dillon, *C. J.*

"It was settled law when the act was passed, that after shareholders had entered into a contract among themselves under legislative sanction, and expended their money in the execution of a plan mutually agreed upon, the plan could not, even by virtue of legislative enactment, be radically changed by a majority alone [in the case at bar by the directors only], and dissentient stockholders be compelled to engage in a new and totally different undertaking, because such action would impair the obligation of the dissenting stockholders' contract with their associates and the State."

Mills *v.* Central R. R. Co., 41 N. J. Eq., 1, 4, 5.

"Whether or not the Legislature can authorize the consolidation of a corporation under the general power reserved to alter or annul the charter, it cannot do so when the rights of stockholders will thereby be affected by increasing their liability as such or diminishing the value of their stock, unless the consolidation is made by the unanimous consent of the stockholders."

Botts *v.* Simpsonville, &c., Turnpike, 88 Ky., 54; s. c., 2 L. R. A., 594.

Unreasonable amendments to the by-laws of a mutual co-operative assessment insurance society cannot be made without the consent of the members, and the same rule applies with much greater force to an attempted amendment of the charter of the association in respects most material both to its present and future business and the obligations of its members as insurers and insured.

Weber *v.* Supreme Tent of K. of M., 172 N. Y., 490.

Langan *v.* Supreme Council A. L. of H., 174 N. Y., 266.

Beach *v.* Supreme Tent of the K. of M., 177 N. Y., 100.

Evans *v.* So. Tier Masonic Relief Assn., 182 N. Y., 453.

Strauss *v.* Mutual Reserve Fund Life Assn., 126 N. C., 971; 128 N. C., 465; s. c., 83 Am. St. Rep., 699.
Wuefler *v.* Trustees Grand Grove W. O. D., 116 Wis., 19; s. c., 96 Am. St. Rep , 940.
Smith *v.* Supreme Lodge K. of P., 83 Mo. App., 512.

"A certificate of membership issued by an insurance benefit society is a contract and can be changed only by and with the consent of both parties."

Russ *v.* Supreme Council A. L. of H., 110 La., 588; s. c., 98 Am. St. Rep., 469.

The amount to be paid to a beneficiary in a mutual benefit or assessment insurance society cannot be changed by a by-law of the adoption of which the member had no notice and to which he did not consent.

Smith *v.* Supreme Council A. L. of H., 94 App. Div. (N. Y.), 357.

"It was beyond the power of the defendant to affect the obligation expressed in the certificate without the consent of its holder."

Supreme Council A. L. of H. *v.* Champe (C. C. A.), 127 Fed. Rep., 541.
Supreme Council A. L. of H. *v.* Getz (C. C. A.), 112 Fed. Rep., 119.
Weber *v.* Supreme Tent of K. of M., 172 N. Y. 490; s. c., 92 Am. St. Rep. 753.

"Whatever may be the power of a mutual association to change its by-laws, such changes must always be in furtherance of the essential business of its creation and not destructive of vested rights."

Makely *v.* Supreme Council A. L. of H., N. C., 45 S. E. Rep , 649, 650.

Citing:

Kerr on Insurance, 127.
Niblack Benefit Societies 58,
Ebert *v.* Mutual Reserve Fund Life Assn., 81 Minn., 116.
Getz *v.* American L. of H., 109 Fed. Rep., 261.
Newhall *v.* Legion of Honor, 181 Mass. 111; s. c., 63 N. E. Rep., 1.
Knights Templar *v.* Jarman (C. C. A.), 104 Fed. Rep., 638.

"On the termination of its business by a life insurance company and the transfer of its assets and policies to another company, each policyholder may, if he desires, terminate his policy and maintain an action to recover from the assets such sum as he may be equitably entitled to."

Lovell *v.* St. Louis Mut. Life Ins. Co., 111 U. S., 265.

The re-incorporation made fundamental changes.

The incorporation of the Mutual Reserve Life Insurance Company as a pretended re-incorporation of the Mutual Reserve Fund Life Association, made material and fundamental changes in the nature, powers and obligations of the corporation and in the status, liabilities and burdens of its members, and so affected the contracts of members as to impair the obligation of such contracts and deprive them of their vested rights without due process of law. This, we submit, is demonstrated by a comparison of the legal status and obligations of the *Association* and its members with the present legal status of the *Company* and its members under the widely different laws of New York governing mutual, co-operative assessment associations and those governing old line, level premium, legal

reserve, valued policy companies, such as the Mutual Reserve Life Insurance Company is or purports to be.

Under Ch. 175, Laws of New York of 1883, by which the Mutual Reserve Fund Life Association was governed up to the passage of the "Insurance Law" of 1892 (Ch. 690, Laws of 1892), the business of the Association was *limited* to the transaction of *life* or *casualty* insurance or both *upon the co operative assessment plan* (§§ 1, 2, Ch. 175, Laws of 1883).

The power to make by-laws and amend the same was granted (§ 4, Ch. 175, Laws of 1883), but subject to the limitation that amendments could only be made after full notice to the members and through their formal action (§ 16, Ch. 175, Laws of 1883).

Only associations or societies whereby upon the decease of a member a money benefit was paid as the result of voluntary donations, dues or assessments paid by the members or by members of a class therein, came within the scope of the act, it being expressly enacted that only through funds so realized can benefits be paid, and such societies were "subject only to the provisions of this act" (§ 5, Ch. 175, Laws of 1883).

The act expressly provides that such societies as promise or agree with their members "upon the sickness or other physical disability of a member and *not by reason of having attained a certain age*, any money or other benefit" is to be paid or rendered to the member or his beneficiary, "shall be deemed to be engaged in the business of casualty insurance upon the co-operative or assessment plan" (§ 6, Ch. 175, Laws of 1883). There is a general provision for reports, showing in detail what is to be reported upon annually (§ 7, Ch. 175, Laws of 1883). It is left optional with the society whether it shall have a reserve fund; that is there is no "legal reserve" required (§ 7, Ch. 175, Laws of 1883). "No deposit of securities with the superintendent shall be required from such

corporation, association or society" (§ 7, Ch. 175, Laws of 1883). Charters are perpetual unless revoked by the judgment of a court of competent jurisdiction (§ 11, Ch. 175, Laws of 1883). Re-incorporation of existing co-operative assessment societies under the act is permitted but no change in the nature of such societies by such re-incorporation is contemplated or provided for (§ 12, Ch. 175, Laws of 1883). Such corporations are made subject to "visitation" by the Superintendent of Insurance (§§ 13, 14, Ch. 175, Laws of 1883). All co-operative assessment societies already in existence and of the nature described in the act are made subject to its provisions, but no change in their nature, charters, contracts or obligation is made (§ 16, Ch. 175, Laws of 1883). By-laws can only be amended with the knowledge and consent of the members (§ 16, Ch. 175, Laws of 1883).

Each notice of assessment on members "shall truly state the cause and purpose of such assessment" (§ 17, Ch. 175, Laws of 1883). A right to change beneficiaries is expressly conferred (§ 18, Ch. 175, Laws of 1883). The benefit money is exempt from execution or any judicial process (§ 19, Ch. 175, Laws of 1883). Penalties are provided for the misconduct of the officers in matters of reports, &c. (§ 20, Ch. 175, Laws of 1883). Exceptions as to secret fraternal societies are stated (§ 21, Ch. 175, Laws of 1883). "Nor shall anything in this act prevent the creation of a reserve fund" by such co-operative assessment societies "which fund or its accretions, or both, *are to be used for the payment of assessments or death losses or for benefits in case of physical disability only*" (§ 21, Ch. 175, Laws of 1883).

Such are *all* the material provisions of the act governing the nature, charter, business, and membership rights and obligations of the Mutual Reserve Fund Life Association. We submit that it was a legitimate and proper exercise of the reserved legislative power of contract to revise this govern-

ing act and embody its provisions with additions meant to safeguard, but not to change, the corporate business and nature, in Articles VI. and VII. of the "Insurance Law" (Ch. 690, Laws of N. Y. of 1892); but that it was unconstitutional and beyond the reserved legislative power of control and amendment to change the nature and business of the corporation to that of an old line, level premium, legal reserve Life Insurance Company, by the act of its directors alone, through and under the provisions of Ch. 722, Laws of N. Y. of 1901, amending § 52 of the Insurance Law, which § 52, by the express provisions of § 1 of Ch. 725 of the Laws of 1893, had no application whatsoever to co-operative, assessment companies existing under Ch. 175 of the Laws of 1883.

Lord *v.* Equitable Life Assurance Soc.,
109 App. Div. (N. Y.), 252.

This brings us to a consideration of the corporate powers, nature and business of old line, level premium companies, such as the pretended reincorporation made or sought to make of the Mutual Reserve Fund Life Association, under the provisions of Articles I., II., V. and X. of the Insurance Law (Ch. 690, Laws of 1892), which consideration and a comparison with Chapter 175, Laws of 1883, as above analyzed, will, we think, lead the Court to concur in our view that the pretended reincorporation worked a fundamental and material change in the nature, business, and membership contract obligations of the Mutual Reserve Fund Life Association beyond the reserved legislative power of control and in excess of the powers of the corporate directors.

THE INSURANCE LAW OF 1892: This law (Ch. 690, Laws of New York of 1892) was in most respects a codification, compilation and re-enactment in a single statute, known as "Ch. 38 of the General Laws," of the various statutes existing and in force on September 30, 1892, and the construction clause of the Insurance Law provided that: "The provisions of this chapter, so far as they are substan-

tially the same as those of laws existing on September 30, 1892, shall be construed as a continuation of such laws, modified or amended, according to the language employed in this chapter and not as new enactments, and shall be applicable to all corporations formed under laws repealed by this chapter" (§ 292, Ch. 690, Laws of N. Y. of 1892). Hence Article VI. of the Insurance Law is in large part a re-enactment and continuation of Ch. 175 of the Laws of 1883, the provisions of which we have just reviewed, while the other Articles provide for the organization, government and regulation of other kinds of insurance companies than mutual co-operative assessment societies, among others of old line, level premium companies, such as the Mutual Reserve Life Insurance Company is made by its charter. As to such companies it is not necessary for the purposes of this case to consider or review any Acts prior to the "Insurance Law" itself because it is under § 52 of that Law, as amended by Ch. 722, Laws of New York of 1901, that the Mutual Reserve Life Insurance Company was incorporated.

The Insurance Law, § 70, Article II., provides for the incorporation and fixes the business and power of old line, level premium companies. The broad and sweeping nature of the insurance authorized to be made and the nature of the business to be done may be seen by a reference to that section.

Among other things, this section authorizes a company like the Mutual Reserve Life Insurance Company to make, "the following kinds of insurance": (1) "Upon the lives or the health of persons and every insurance appertaining thereto and to grant, purchase and dispose of annuities."

The business of the Mutual Reserve Fund Life Association under Chapter 175 of the Laws of New York of 1883, and its charter granted under that act was "the business of life insurance upon the co-operative or assessment plan under and in pursuance of the provisions of said act" (Certificate, p.

84, fol. 221), and "the mode and manner in which the corporate power was granted or to be exercised are by issuing certificate of membership, policy or other evidence of interest to and promise or agreement with its members, whereby, *upon the decease of member*, money or other benefit, charity, relief or aid is to be paid, provided or rendered by said corporation or association, to the legal representative of such member, or to the beneficiary designated by such member, which money, benefit, charity, relief or aid are derived from voluntary donations or from admission fees, dues or assessments or some of them collected or to be collected from the members thereof or members of a class therein and * * * wherein the paying, providing or rendering of such money or other benefit, charity, relief or aid *is conditioned upon the same being realized in the manner aforesaid;* and wherein the money or other benefit, charity, relief or aid so realized is applied to the use and purposes of said corporation or association and the expenses of the management and prosecution of its said business" (Certificate, pp. 85, 86, fols. 225–227).

As against this, the charter of the Mutual Reserve Life Insurance Company under § 70 of the "Insurance Law" and under § 52 of that law as amended by Chapter 722 of the Laws of New York of 1901, eliminates entirely the right and authority of the corporation to do future business upon the mutual benefit, co-operative assessment plan, eliminates entirely the element that if the funds realized by assessments upon this plan are insufficient to meet obligations to the new members, then they must take the proportion that the sum realized represents, eliminates entirely the idea and purpose of the association not to do a general life insurance business upon a definite contract, level premium basis and substitutes for it the provision that "the business of the Company shall be insurance upon lives or the health of persons and all and every insurance appertaining thereto, the making of endow-

ments, the granting, purchasing and disposition of annuities, such kind of insurance being authorized under subdivision 1, § 70 of the 'Insurance Law.'"

Art. III., Mutual Reserve Life Ins. Co., Charter, Certificate, p. 104, fol. 282.

This, as we insist, makes a radical and fundamental change in the nature of the corporation and commits its members by the action of its directors alone without the knowledge or consent of the members, to the business of general life insurance upon a plan not contemplated by their original agreement among themselves, nor provided for by their certificates and policies of membership. To such a change their assent was essential.

A most learned and able Attorney-General of the State of New York, the Honorable Simon W. Rosendale, in 1892, in a very clear and cogent opinion, stated his conclusion that "A company formed for the purpose of transacting the business of assessment life insurance, cannot alter its character to include casualty insurance, if thereby the acquired rights and liabilities of existing policyholders are altered."

He bases this conclusion upon a careful examination and analysis of § 52 of the Insurance Law, and in the course of his opinion says:

"The corporation in question might, at the time of its original incorporation, have so framed its declaration as to have allowed it to transact the business of casualty insurance as well as life insurance. Not having done so, it is precluded from making any change in the scope of its business whereby vested rights may be prejudiced or altered. In my opinion, the policyholders who were insured in this company under a certificate of incorporation confining its operations to life insurance alone, have a right to be protected from any change or extension of the business of this company *whereby*

risks of another character are added to the liabilities of the company."

Report of Attorney-General of New York, 1892, pp. 293, 294.

Again, Chapter 722 of the Laws of New York of 1901, in addition to attempting to authorize the directors of the Mutual Reserve Fund Life Association and other co-operative assessment companies existing under Chapter 175 of the Laws of New York of 1883 of the Insurance Law, to thus reincorporate a mutual association without the consent of its members so as to take upon itself the conduct of its business for the future upon an entirely different line and basis, also undertook to bring the existing contracts, policies and certificates then outstanding of such mutual assessment corporations as might re incorporate under the act to a basis of one-year term insurance at the ages attained only, the provision being "all contracts, policies and certificates issued by such corporations prior to accepting the provisions of this chapter, *shall be valued as one-year term insurance at the ages attained*, excepting when such contracts, policies or certificates shall provide for a limited number of specified premiums or of specified surrender values, in which case they shall be valued as provided in Article II., § 84 of the Insurance Law."

Laws of New York, 1901, Ch. 722, § 1, amending § 52 of the Insurance Law.

The Insurance Law expressly provides that associations doing business "upon the co-operative or assessment plan, as defined in this Article * * * shall be subject to all the provisions of this Article *and not to the provisions of Article II.*"

Laws of New York, 1892, Ch. 690, § 209. Appendix, p. 19.

And this *limitation* in § 209 of Article VI. has remained unchanged from the date of the original

enactment of the Insurance Law up to the present time, whence it seems to follow that a "valuation" of policies under Article II., § 84, of the Insurance Law in connection with the re-incorporation of the Mutual Reserve Fund Life Association was and is not permissible, nor do we think that the Legislature could, by the enactment of Chapter 722 of the Laws of 1901, cause the policies of members of the Mutual Reserve Fund Life Association to be valued "as one-year term insurance at the ages attained" without impairing the obligation of contracts.

It will be noted that before the Mutual Reserve Fund Life Association, through its directors, acting without the consent or knowledge of its members, could accept the re-incorporation as the Mutual Reserve Life Insurance Company under this act, that it had to value and report the policies of its members "as one-year term insurance at the ages attained," their policies, as the separate Appendix to this brief and the Certificate of the Circuit Court of Appeals show, being, at least in the case of all the complainants, regular, mutual, co-operative assessment policies, not limited as to a number of specified premiums nor having a specified surrender value, hence the act of the directors in accepting re-incorporation under this amendment of § 52 of the Insurance Law was based upon a prior radical and material change in the policy rights and interests of the members in this, that it valued their policies as one-year term insurance, when they were not and could not be so valued or treated under their membership in the Mutual Reserve Fund Life Association.

"A policy of life insurance which stipulates for the payment of an annual premium by the assured, with a condition to be void on non-payment, is not an insurance from year to year like a common fire policy; but the premiums constitute an annuity, the whole of which is the consideration for the entire assurance for life."

New York Life Ins. Co. *v.* Statham, 93 U. S., 24.

In the course of his opinion in the case just cited, Mr. Justice Bradley, delivering the opinion of the Court, said:

"We agree with the Court below that the contract is not an insurance for a single year with the privilege of renewal from year to year by paying the annual premium, but that it is an entire contract of insurance for life, subject to discontinuance and forfeiture for non-payment of any of the stipulated premiums" (93 U. S., 30). What, then, would work a more radical or fundamental change in the contract rights of the members of the Mutual Reserve Fund Life Association than to compel them, prior to re-incorporation as the Mutual Reserve Life Insurance Company, to treat all of their certificates or policies of membership as "valued" as one year term insurance at the ages attained, thereby subjecting them during all the future time of their connection with the association to have their contracts of membership treated as one year renewable term insurance upon which advances in assessments, based on the age attained, could be continually made? When to this radical and fundamental change of system, valuation and treatment of policies of existing members you add the fact that this consent to the valuation of their policies as one year term policies at age attained was to be given, not by themselves but by the directors of the association without their knowledge or consent, you show an impairment of the obligation of contracts and a deprivation of property without due process of law.

It has also been repeatedly held that the policies of the members of the Mutual Reserve Fund Life Association are not "valued" term policies, but are contracts for the life of the assured, subjecting him only to the payment of dues, fees and assessments, based upon the principles of mutuality and permanence, and under which the association will be liable only for the funds derived from its assessments upon

its members. This, indeed, is the defense of the Association itself when sued upon its policies.

McCoy *v.* Mutual Reserve Life Ins. Co., 84 App. Div. (N. Y.), 316.

Mutual Reserve Fund Life Association *v.* Hamlin, 139 U. S., 297.

Again, the Mutual Reserve Fund Life Association was a purely mutual assesment company, whose policies, as they stood at the time of the pretended re-incorporation, were not "valued," in the sense of that term in insurance practice, for the purpose of maintaining a legal reserve, but were assessment policies with full right of participation in earnings, profits, surplus and the special tontine reserve fund created by the certificate contract (Appendix, pp. 31-32, 37-39, 44, 45-48, 53, 55, 60-61, 62-66) with each member. Chapter 722 of the Laws of New York of 1901 violently interfered with this *status* and these *vested* contract rights by providing that "all contracts, policies and certificates issued by such corporations *prior* to accepting the provisions of this chapter *shall be valued as one year term insurance at the ages attained.*" The result of this statutory provision was to change by law the contract rights of members so as to take from them, in the form of a permanent reserve, on a valued policy (the valuation *for reserve purposes* being increased annually to the age attained by the member), a portion of the funds of the company in which they were expressly entitled to participate, and to do this by the action of the directors alone through the pretended re-incorporation under § 52 of the Insurance Law as amended by Chapter 722 of the Laws of 1901.

Simply speaking for the purpose of the payment of death benefits, the policies are not "valued," but for the purpose of establishing a legal reserve and changing the entire status of the corporation and its members, Chapter 722 of the Laws of 1901 arbitrarily "values" the policies in the manner and for

the purpose above shown, and each year "robs Peter to pay Paul," and establishes "a legal reserve" which compels payments from members not required by their contracts of membership.

It only calls for an examination of the provisions of the policies issued by The Mutual Reserve Fund Life Association to show that under the "valued" policy clause of Chapter 722 of Laws of New York of 1901, amending § 52 of the Insurance Law, to permit the re-incorporation of the association, the status of the member was changed and the obligation of his contract was impaired, and this "without due process of law" because his consent to these fundamental changes was not obtained.

Certificate of Membership of Complainant Howard, Certificate from C. C. A., pp. 6, 7.

In the case of the respondent, the Mutual Reserve Fund Association, it has been expressly held that the directors are without power to "place all members who join prior to a certain year into a class by themselves and advance their ages each year as assessments are made, while all members joining after that date are assessed as of the age of entry, as this is not an equitable distribution of the increase in the cost of carrying the older members, but constitutes an unwarranted discrimination against the old members."

2 Cooley's Briefs on Insurance, p. 1023.

Ebert *v.* Mutual Reserve Fund Life Assn., 81 Minn., 116.

Strauss *v.* Mutual Reserve Fund Life Assn., 126 N. C., 971; s. c., 83 Am. St. Rep., 699.

See

Miller *v.* Mutual Reserve Fund Life Assn., 109 Fed. Rep., 278.

This Court, in the *Hamlin case*, said: "The Mutual Reserve Fund Life Association, the defend-

ant below, was organized under the laws of New York to promote the well being of its members and to furnish substantial aid to their families or assigns in the event of a member's death." Is the Mutual Reserve Life Insurance *Company* a corporation of this nature? Or is it instead something fundamentally different, namely an old line, life insurance company, mutual only as to membership, but conducting business on a basis so fundamentally different as to be a radical departure from the purposes, plans and obligations of the Mutual Reserve Fund Life Association? Could any law constitutionally authorize such a fundamental change by the acts of directors alone?

VI.

THE LEGAL PROPOSITIONS STATED UNDER THE PRECEDING POINTS OF THIS BRIEF, ESPECIALLY AS TO THE CONSTRUCTION OF THE NEW YORK STATUTES, ARE, IN LARGE MEASURE, SUSTAINED BY RECENT DECISIONS OF THE COURTS OF NEW YORK, AND THE CASES UPON WHICH RESPONDENTS RELY ARE CLEARLY DISTINGUISHABLE, BOTH UPON THEIR FACTS AND AS MATTER OF LAW, FROM THE CASE AT BAR.

Lord *v.* Equitable Life Assurance Soc., 109 App. Div. (N. Y.), 252; affirming same case in 47 Misc. (N. Y.), 187.

Argument for Complainants-Appellants.

This brings us to a succinct statement of our conclusions in the form of a connected argument and incidentally to a discussion of the contentions of opposing counsel; and to a consideration of certain statutes and decisions cited by

them in the court below, and upon which we do not doubt they will mainly rely in this court, on the very grave and interesting questions of constitutional law certified to this Court by the Circuit Court of Appeals. Those questions, four in number, are set forth in the "Certificate" from the Circuit Court of Appeals and therefore need not be restated here in full (Certificate, pp. 5, 6).

If the case of *Wright* v. *Minnesota Mutual Life Insurance Co.* (193 U. S., 657) be not a controlling authority in accordance with which all the questions certified must be answered in the negative, then the questions are—as we believe them to be—practically questions of first impression, never previously presented to this Court for final determination by it.

That the *Wright case* is not only not a controlling authority against the contentions already made by us in behalf of complainants-appellants, but is, on the contrary, a case strongly supporting those contentions, we have previously tried to show (*ante*, pp. 12, 13).

We advert to the case again here as we know that opposing counsel will lay much stress upon it, because it does decide that upon the facts of that case, an assessment company could be re-incorporated and change its business from the assessment to the regular premium basis; and also because it seems to hold that a change in a corporate charter which alters the business of a mutual co-operative assessment life insurance company so as to authorize it to do further business as an old line company on a fixed premium basis, is not a fundamental change and does not impair the obligation of contracts.

On its facts the *Wright* case seems to be correctly decided, but it by no means follows that the *dicta* of the case are controlling in the case at bar.

In the *Wright* case the Court was dealing with "what appears, so far as the record discloses, to be a solvent and prosperous mutual insurance company with which the others in interest are apparently

satisfied" (193 U. S., 662). "A large amount of business has been done on the new plan and the record discloses that the company has kept its contracts, is solvent, and doing business in many States" (193 U. S., 662).

In the case at bar "the record discloses" a state of facts materially different.

The Mutual Reserve Fund Life Association was insolvent (Certificate, p. 4); this insolvency was known to its directors (Certificate, p. 4) and they devised the scheme for re-incorporation without the knowledge or consent of the members and for the purpose of increasing their own control and power and abridging the rights of the members (Certificate, p. 4; *ante*, pp. 11–13). No corporate action was taken by the members and policyholders (Certificate, p. 4) and the first notice they had of the re-incorporation was a premium call by the new company which was "an entire departure from the contract obligations to members of said Association to whom it was sent" (Certificate, p. 4); that it was such a departure is clearly shown by the correspondence over it between Judge Snodgrass—one of the complainants - and the new company, assuming itself to be a re-incorporation of the Association (Certificate, pp. 99–103; Exhibits 5, 6).

In the *Wright* case the statute under which the re-incorporation was made "expressly provides that it shall not operate to impair the obligation of any contract" (193 U. S., 663), while in the case at bar, § 52 of the Insurance Law of New York (Ch., 690, Laws of 1892) as it stood prior to the enactment of Ch. 722, Laws of 1901, under which the re-incorporation was made, provided that re-incorporations under that section as it stood before the change in 1901 "shall be deemed to possess the same powers and be subject to the same liabilities *as if such amended* charter or certificate had been its original charter or certificate of incorporation, but without prejudice to any pending action or proceeding or rights previously accrued" (Law of 1892, Ch. 690, § 52).

But to these words, which standing thus seemed at least to protect the existing corporate rights, if they did not the contracts of members individually, the amendment of 1901, obtained at the instance of the directors of the Mutual Reserve Fund Life Association, added the following extraordinary and revolutionary clause, under which the pretended re-incorporation was effected, namely: "*This section shall apply to insurance corporations organized or subject to article six of the insurance law as well as to insurance corporations organized under special charters or articles two and ten of the insurance law: all contracts, policies and certificates issued by such corporations prior to accepting the provisions of this chapter shall be valued as one year term insurance at the ages attained, excepting when such contracts, policies or certificates shall provide for a limited number of specified premiums or for specified surrender values, in which case they shall be valued as provided in article two, section eighty-four of the insurance law*" (Appendix, pp. 23–25).

Prior to the addition by Chapter 722, Laws of 1901, of the language above quoted in italics, The Mutual Reserve Fund Life Association could not have been re-incorporated as an old line level premium company, and § 52 of the Insurance Law of 1892 had no application to such associations or to corporations existing under Article VI. of the Insurance Law (*ante*, pp. 20, 21).

The Court will note that the language of the amending act instead of saving the existing contract rights of members *expressly changed and altered those rights* by providing that upon accepting the provisions of the amendatory act for the purpose of re-incorporating under it "all contracts, policies and certificates issued by such corporations * * * shall be valued as one year term insurance at the ages attained" except in certain specified cases (which did not apply in the case at bar). when the valuations were to be made under § 84 of Article II. of the Insurance Law, an article which previ-

ously had no application to co-operative assessment associations (*ante*, pp. 43, 44; Appendix, pp. 13, 14). Here, as we insist, is an express provision of the amending act impairing the obligation of the contracts between the association and its members and by its terms made *immediately* applicable to those contracts. If this be not a law impairing the obligation of contracts, what is it? We invite the attention of the Court to the provisions of the complainants' certificates of membership and policies of insurance and ask where any "valuation" of those policies "as one-year term insurance" is provided for or contemplated (Certificate, pp. 6–9, and Appendix, pp. 29–79). To so "value" them was and is to place the contracts of members on a new and far more onerous footing, with added burdens and increase of risks, and thus not only impair the obligation of their contracts but deny them the equal protection of the laws, because they had no voice in the changes made, while depriving them of their property without due process of law.

In the *Wright* case, as in the case at bar, it was argued that the reincorporation act necessarily had the effect of impairing the obligation of contracts (193 U. S., 663); but in that case "the right of amendment of the Articles of Association * * * was reserved in the original articles" (193 U. S., 663), while in the case at bar no such right to amend the articles *as between* the members themselves was reserved, nor was there either in the articles themselves or in the act under which the Association existed (Chap. 175, Laws of 1883) any reservation of a power to change, alter or amend the articles or to alter the relations of the members as between themselves and the association (*ante*, p. 7; Appendix, pp. 5–8). The only reservation anywhere of any power of amendment was the general constitutional reservation of the right to alter and repeal *all laws* creating corporations (N. Y. Const., Art. 8, § 1) and the provisions of the Revised

Statutes in relation to corporations, that all charters "granted by the Legislature shall be subject to alterations, suspension and repeal" (R. S., pt. 1, Ch. 18, tit. 3, § 8).

These provisions relate to the control of the Legislature over the laws creating corporations, but confer no power upon the Legislature to change the rights or alter the contractual obligations of corporate stockholders and members (Lord *v.* Equitable Life Assurance Soc., 109 App. Div. (N. Y.), 252). Hence, in this most vital respect there is a radical difference between the *Wright* case and the case at bar. In the *Wright* case it is said: "A radical departure affecting substantial rights may release those who had come into the corporation on the basis of its original charter" (193 U. S., 663), and the Court adds: "Each case depends upon its own circumstances and how far the right of amendment has been impliedly or expressly reserved in the creation of corporate rights" (193 U. S., 663). Chapter 175 of the Laws of New York of 1883 will be searched in vain for any express or implied reservation of change or alteration in the corporate charter and the nature of the corporate business *by the act of the directors alone* and without the knowledge or consent of the members who constitute the corporate entity. Such a reservation is abhorrent to justice and the settled principles of corporation law (Mason *v.* Pewabic Mining Co., 133 U. S., 50, 58, 59; Clearwater *v.* Meredith, 1 Wall., 25, 39).

In the *Wright* case: "Power to amend the articles was vested in the trustees" by the provisions of the charter itself (193 U. S., 660), but this right was subject, so far as the change in the nature of the corporation and the corporate business was concerned, to ratification or disaffirmance by the members upon full notice and in regular corporate meeting (193 U. S., 661), while in the case at bar no such right was provided for in the amendatory act under which the re-incorporation was made. This—as we have already seen (*ante*, pp 21, 22,)—was a viola-

tion of the legislative policy requiring notice to the members even of changes in the corporate by-laws as well as of changes in the nature of the corporation itself (*ante*, pp 17, 18), and the extent of this sudden departure, by Ch. 722, Laws of 1901, from the legislative policy is emphasized by the fact that under the Insurance Law of 1892 as it stood when Chapter 722 of Laws of 1901 was passed, and as it now stands, a transfer or re-insurance of its risks by co-operative assessment associations was expressly forbidden "unless the contract, transfer or re insurance is first submitted to and approved by a two-thirds vote of a meeting of the insured called to consider the same, of which meeting a written or printed notice shall be mailed to each member, certificate-holder or policy-holder at least thirty days before the day fixed for such meeting" (Ch. 690, Laws of 1892, § 209). Yet in the face of all these requirements of notice to and action by the members of such associations even in the matter of minor alterations, the directors of the Mutual Reserve Fund Life Association themselves procured the passage of Ch. 722, Laws of N. Y. of 1901, depriving the members of that Association of all voice in the matter of a radical change in the nature of the corporation in which they were insurers as well as insured (Certificate, p. 4). Surely these facts materially "distinguish" the Wright case from the case at bar.

Again: In the *Wright* case the exercise of the power of amendment was in good faith (193 U. S., 664), while here—so far as the directors were concerned—they exercised the power fraudulently and in bad faith (*ante*, pp. 8, 9; Certificate, pp. 3, 4). In the *Wright* case it does not appear that any certificate has been unpaid, nor is any failure shown to levy assessments required under the original articles" (193 U. S., 664), while in the case at bar a willful and fraudulent refusal to pay certificates is shown (Certificate, pp. 4, 33-35; and Exhibit 7 1/2, pp. 117-121).

Such are the marked and essential differences between the facts in the *Wright* case and in this case, and because of these differences we regard the Wright case as inferentially sustaining the contentions of complainants-appellants, that Chapter 722 of the Laws of New York of 1901, violates the property rights of the complainants and impairs the obligation of their contracts of membership by committing them to the conduct of a general life insurance business upon a different plan from that to which they had agreed and for which they had become responsible; and this by the action of the directory only and without the knowledge or consent of the members (Certificate, pp. 3, 4). Compare with our contentions and the views of the *Wright* case here expressed the recent decision of the Appellate Division of the Supreme Court of New York in the case of *Lord* vs. *The Equitable Assurance Society* (109 App. Div., 252).

But it may be contended by counsel for respondents-appellees that because the case at bar rests upon the allegations of a bill admitted by demurrer, corporate insolvency and fraud upon the part of the directors is not shown. To such contention, if made, our answer is that the Certificate from the Circuit Court of Appeals is predicated upon these allegations as facts admitted by the demurrer, and that under settled authorities they stand so admitted.

"An allegation of insolvency is an allegation of a conclusion of fact, which is admitted by a demurrer."

Campbell *v.* Heiland, 55 App. Div. (N. Y., 95).

Shoe and Leather Bank *v.* Baker, 148 N. Y., 581, 583.

Perry *v.* Turner, 55 Mo., 418.

Overmyer *v.* Cannon, 82 Ind., 457, 458.

Bank of Poughkeepsie *v.* Ibbotson, 24 Wend. (N. Y.), 473, 479.

Dawson *v.* Sholly, 4 Kan. App., 367; s. c. 45 Pac. Rep., 949.

"Where allegations of fraud are stated in the bill, it is not necessary that the facts and circumstances which tend to establish the fraud should be detailed. Where the facts which constitute the fraud are set forth with an averment of the injurious result, the case is sufficiently made by the pleadings, and a detail of the circumstances which tend to establish a dishonest intent in defendant's action is more properly left to the evidence."

Tong *v.* Marvin, 15 Mich., 50.

The opinion in this case was delivered by the late *Mr. Justice Cooley*. The contention was that the demurrer should be sustained on the ground "that the bill in charging fraud merely sets forth the conclusions without giving such fact as would warrant the conclusions" (15 Mich., 63, 65).

In the case at bar the substantive facts upon which fraud is charged are so stated as with certainty to render the subject matter of the bill clear as to the allegations therein made. We therefore are of the opinion that the Court below should have overruled the demurrer of defendants and put them upon their answer to the bill.

De Louis *v.* Meek, 2 G. Greene, 55; s. c., 50 Am. Dec., 491.

"A general allegation of it (fraud) in the bill would have been sufficient, if so certain as to render the subject matter of it clear." "The demurrer admits the fraud thus set up."

Davis *v.* Tiletson, 6 How., 119, 120.

"When it can fairly be gathered from all the allegations of a complaint in such an action that officers and directors of the corporation have made use of relations of trust and confidence in order to secure or promote some selfish interests, enough is then averred to set a court of equity in motion to

require an answer from defendants in regard to the facts."

Sage *v.* Culver, 147 N. Y., 241.

Respondent's counsel in their brief in the Court below expressly say that the purpose of the re-incorporation as the Mutual Reserve Life Insurance Company was "to accept the provisions of the Insurance Law and obtain the privileges to which the corporation would have been entitled if originally incorporated under the Insurance Law" (Brief of Respondents in C. C. A., p. 31). They add that: "By Article III. of its amended charter (Certificate, p. 3) it *extended the scope of its business to include all kinds* of insurance on the lives and health of persons" (Respondents' Brief in C. C. A., p. 31). And although they thus admit a fundamental change in the plan and nature of the corporate business, they insist that the Legislature had the power to authorize the directors to make such change without the consent of the members (Respondents' Brief in C. C. A., pp. 31, 32.)

Seeking, however, to show some basis for such extraordinary authority being conferred upon the directors—and admitting that such power did not exist under Chapter 175 of the Laws of 1883 or under the Insurance Law of 1892, until its amendment by Chapter 722 of the Laws of 1901 (Respondents' Brief in C. C. A., p. 34)—counsel for respondents cite and refer to Chapter 463 of the Laws of New York of 1853 as amended by Chapter 551 of the Laws of 1853, and as again amended by Chapter 328 of the Laws of 1860, and while they admit that the acts just referred to were repealed by the Insurance Law of 1892 (Respondents' Brief in C. C. A., p. 33) they contend that the legislative policy to permit charter amendments by the act of directors alone is shown by the Acts of 1853 and 1860 to which they refer (Respondents' Brief in C. C. A., p. 33). As they will undoubtedly renew the same contention in this Court a brief examination of the acts in question seems necessary.

Chapter 463 of the Laws of New York of 1853 had no relation to mutual, co operative assessment life insurance companies, but was limited by its terms to old line life insurance companies having a paid-in capital stock, § 6 of the act providing: "No company shall be organized under this act * * * with a less capital than one hundred thousand dollars," &c. The act contains no provision for the re-incorporation of companies organized for the purposes of the act either for the same or different purposes, but does contain a provision that "Any existing company incorporated by or authorized under the laws of this state, *for the purposes mentioned in this act*, may avail themselves of the provisions of this act, *after publishing their intentions for six weeks in the state paper*, and obtaining the consent of the majority of the trustees or directors, and complying with the third section of this act in relation to the filing and contents of the declaration therein referred to" (Laws of 1853, Ch. 463, § 21).

This, however, only contemplates that existing *corporations doing the same business in the same way*, may, without change of plan, purpose or corporate business, re-incorporate under the Act of 1853 under the existing corporate name. This is a very different matter from a re-incorporation of an assessment company, without the knowledge or consent of its members, to do a different business in a different way and under a different name as in the case at bar.

Had the Mutual Reserve Fund Life Association re-incorporated under § 209 of Chapter 690, Laws of 1892, *without change of name or business*, the case would have been analogous to re-incorporations of companies under § 21 above cited.

Chapter 551 of the Laws of New York of 1853, amending the act just discussed, is immaterial here because its only purpose is to make changes in regard to the capitalization and investments of corporations organized under Chapter 463, Laws of 1853.

Chapter 328 Laws of New York of 1860 amending Chapter 463 of the Laws of 1853 is also largely by way of regulation of capital and deposit and investment securities, and like the acts which it amends relates only to old line life insurance companies. It contains no provision for the re-incorporation of such a company into a company of a different class and nature, and § 3 of this amendatory act, cited and relied upon by respondents' counsel in their brief in the Court below (Respondents' Brief in C. C. A., p. 32), only provides that companies organiezd for the purposes of the act under Chapter 463 of the Laws of 1853, may, by a vote of their directors, accept the provisions of the act and amend their charters in conformity therewith. This contemplates no change of any kind in the plan and purpose of the corporation or in the nature of the corporate business but a mere continuance under the same act as amended of the same corporation, for the same purposes and under the same name.

None of these acts relate to or regulate mutual co-operative assessment societies; they were all repealed by the Insurance Law, Chapter 690 of the Laws of 1892, but in substance were re-enacted in Article I. and II. of that law regulating the organization and business of old line, level premium, legal reserve insurance companies.

Instead of showing the legislative policy to be as respondents' counsel contend, they strengthen our contention that never until the passage of Chapter 722, Laws of New York, 1901, did the Legislature of New York try to confer power upon the directors of a corporation to amend its charter, without the consent of its members, so as to change its name, its nature, its plans and purposes and the contract obligations of its members not only as between themselves but as between the corporation and themselves. *See* closing paragraph Chapter 722, Laws of New York of 1901, amending § 52 of the Insurance Law (Appendix, pp. 24 and 25).

Respondents' counsel also seem to place much re-

liance on Chapter 725, Laws of New York of 1893, amending the Insurance Law (Respondents' Brief in C. C. A., pp. 34, 35). Their contention is that § 3 of the act just named was clearly "broad enough to include the corporation with which we are dealing," and that "if the Act of 1892 (Insurance Law) abolished, as to this corporation, the only method provided by statute for amending its charter, *i. e.*, by vote of its directors * * * and without any vote or action by the members at large, such method was re-established by Chapter 725, Laws of 1893" (Respondents' Brief in C. C. A., p. 35).

We have already shown that no such method of changing the class, nature and business of co-operative assessment societies, or even of ordinary life companies, ever existed in the State of New York under any of the laws referred to (*ante*, pp. 18–23). It only remains to point out that respondents' learned counsel err in assuming that Chapter 725 of the Laws of 1893 had the effect or contained the power for which they contend. This is easily done by a mere quotation of the *first* section of that Act which provides: "Nothing in the following sections shall apply to any insurance corporation organized under articles six and seven of the insurance law" (Ch. 725, Laws of 1893, § 1). Consequently the amendment of § 52 of the Insurance Law which follows in this Act is limited to authorizing re-incorporations of existing old line, level premium companies, under Article II. of the Insurance Law, which article, as we have seen (*ante*, pp. 20, 21) is itself but a re enactment of the laws under which such companies previously existed and therefore this amendatory law, even as to such companies, contemplated no re-incorporation involving any change of either plan, purpose or obligation. So after all respondents can derive neither comfort nor advantage from Chapter 725 of the Laws of 1893, but on the contrary the first section of that act remains to plague them in the construction of

Chapter 722 of the Laws of 1901, under which the pretended re-incorporation was made.

Passing then to Chapter 722 of the Laws of 1901 we see that upon it alone rests any right of the directors to re-incorporate an assessment company, organized under Chapter 175 of the Laws of 1883 and continuing its existence without change under Article VI. of the Insurance Law, as a corporation of a different class, governed by different laws, having different rights and duties and with different burdens resting upon its members (*ante*, pp. 22, 23; Appendix, pp. 23, 25).

The Insurance Law itself provides that corporations organized or continuing their existence under Article VI. of the law shall not be subject to the provisions of Article II. (including § 70), of that law, but shall be governed by the provisions of Article VI. only (Laws of 1892, Chapter 690, §§ 201, 206, 209; Appendix, pp. 15, 16, 18, 19). Thus, in § 209, it is expressly provided that co-operative assessment corporations shall be subject to all the provisions of this article (Art. VI.), *and not to the provisions of Article II.*" (Appendix, p. 19, insert containing § 209). Then came the amendment of § 52 by Chapter 725, Laws of 1893, as above shown, and § 1 of that chapter, *excluded* corporations existing under and governed by Article VI. of the Insurance Law from the effects of the amendment of 1893. (Ch. 725, Laws of 1893, §1; *ante*, pp. 20, 22, 23; Appendix, pp. 21, 22).

Then came the directors of the Mutual Reserve Fund Life Association with their procurement of the enactment of Chapter 722, Laws of 1901, but the legislative draftsman of that act only succeeded in amending § 52 of the Insurance Law as amended by Chapter 725 of the Laws of 1893, and as the amendment of 1893 forbade the application of that section to corporations existing under Article VI. of the Insurance Law, it seems at least questionable whether, merely by adding a paragraph to § 52, as amended by Chapter 725 of the Laws of 1893,

providing that "this section shall apply to incorporations organized under or subject to Article VI. of the Insurance Law" (Appendix, pp. 24, 25), the effect of § 1 of Chapter 725, forbidding such application, could be overcome and § 209 (Appendix, p. 19) rendered nugatory, neither section being repealed or expressly qualified, unless it be by implication, and § 209 remaining unchanged in the Insurance Law.

But without regard to this merely technical objection to the application of Chapter 722 of the Laws of 1901, we think we have heretofore conclusively demonstrated that chapter to be unconstitutional and void as depriving the members of the Mutual Reserve Fund Life Association of their vested rights, changing their obligations as between themselves and as between them and the corporation, and making a fundamental change in the class of corporation, nature of the business and laws of control over the corporation of which they were a constituent part without their consent or acquiescence and in fraud of their rights as insurers and insured; as mutually contracting parties and mutually obligated parties. That the members, and complainants as members, had no voice in this remarkable change and never acquiesced therein is clearly shown by the record (Certificate, pp. 3, 4, 23, 25, 27, 28, 29).

If we have not already shown the fundamental change in the nature of the Mutual Reserve Fund Life Association and the obligations of its members by the incorporation, as its successor, of the Mutual Reserve Life Insurance Company as an old line level premium company (*ante*, pp. 32–48), then by way of addition on this point we direct the attention of the Court to the "Provisions, Requirements and Benefits" in the certificate of membership and policy of insurance of the complainant Howard (Certificate, pp. 6–8). In paragraph numbered I. of these provisions, requirements and benefits, it is provided that out of the assessments paid from time to time by the members "25% (is) to be set apart

for the reserve or emergency fund." In paragraph II. it is provided that "25% of the net receipts from mortuary premiums paid under this certificate or policy of insurance during a period of fifteen years from its date shall be added to the reserve or emergency fund" which fund is to be deposited with a trust company (Appendix, pp. 45–48), or with departments constituted by governmental or legal authority (Certificate, p. 7).

In paragraph II. it is further provided that "no claim is payable by the Association except from the death fund of the Association at the time of said death or from any moneys that shall be realized to the said fund from the next mortuary premium call made, or from the reserve or emergency fund as herein provided" (Certificate, p. 7). And then follows the very important agreement with the member contained in paragraph III. that "the *annual* mortuary premiums on this certificate or policy of insurance *after the same has been in force fifteen years from its date shall not include any further contributions to the reserve or emergency fund,* nor shall the net amount of said *annual* mortuary premiums thereafter exceed the annual premiums required by the actuary's tables of mortality or the actual mortality experience of the Association, and after the expiration of said fifteen years there shall be credited to this certificate or policy of insurance, if then in force, the equitable proportion of the then total surplus reserve or emergency fund accumulations in which this certificate or policy is then entitled to participate" (Certificate, p. 7).

By the very terms of this certificate of membership and policy of insurance as thus quoted, the policy of the complainant Howard, after fifteen years from its date, was not to be made the subject of a further accumulation for a reserve or emergency fund. This policy was issued on October 27, 1888 (Certificate, p. 12, fol. 6; Appendix, p. 29), and therefore the fifteen year period expired in October, 1903, while

the similar policy of the complainant Thomas M. Gates was (a quinquennial bond contract, Appendix, p. 44) issued September 7, 1886, and the fifteen-year period expired before the filing of the original bill in this case, in September, 1901; and the same is true of the policy of complainant Frank B. Hamilton, which was issued May 22, 1888, and the fifteen-year period expired on September 15, 1903 (Certificate, p. 12, fol. 6; Appendix, p. 42, 49). Again, the policy of complainant David L. Snodgrass, which was upon the ten-year and not the fifteen-year distribution deposit plan, was issued on January 13, 1892, and the ten-year period expired on January 13, 1902 (Certificate, p. 12, fol. 6; Appendix, p. 58; see also pp. 52-58; Exhibit J, Policy of Complainant David L. Snodgrass). Yet, on June 2, 1902, by premium call 122 the Mutual Reserve Life Insurance Company made a call for a largely increased amount upon the complainant Snodgrass, including, among other things, a provision: "3. *For the reserve or emergency fund*" (Certificate, p. 10), and upon being called to account by Judge Snodgrass, in a very careful and intelligent letter written by him (Certificate, pp. 99, 100; Exhibit No. 5), the new company replies, insisting that "the premium rate under the policy which you have paid not having included the reserve accumulation necessary to continue the insurance as a whole life continuous premium policy," a different rate upon the policy as "term" insurance is proper (Certificate, p. 101; fol. 273), and this, notwithstanding the fact that under its contract with its members the Mutual Reserve Fund Life Association had been annually collecting from them twenty-five per cent. more than the requisite amount to meet death losses and expenses for the purpose of maintaining the same in a voluntary contractual reserve fund deposited with a trust company (Appendix, pp. 31, 43, 45, 50, 54). Having, by the language just quoted endeavored to construe

the policy of complainant Snodgrass as "one year term insurance" to be "valued" as such under Chapter 722 of the Laws of 1901, the company in its letter to Judge Snodgrass further says: "Relative to the new form of contract now being issued by the company *by reason of the re-incorporation upon a legal reserve basis* I have to say that the new policy is a *guaranteed* contract in every particular, carrying with it a fixed or level premium rate throughout life. And the values—such as cash, loan, paid up, extended insurance—*being for stated amounts*" (Certificate, pp. 101, 102; fols. 273, 274).

Does it need any argument to show that the new company, engaged in business of the character just described, with a guaranteed contract and cash surrender, loan paid up and extended insurance provided for, was engaging in an entirely different business from that of a co-operative assessment company?

We shall not stop to argue here whether this be a worse or a better line of business, because the question of the relative merits of the two systems of insurance has nothing to do with the controversy in the case at bar. The members of the Mutual Reserve Fund Life Association had a right to agree between themselves, and through their charter with the State of New York, that they would conduct the business of life insurance *only* upon a co-operative assessment plan, and there was no reserve power in the State or in the directory of the association to change the nature of this business so as to bring it within the scope of the provisions of § 70 of Article II. of the Insurance Law of 1892 and engage it in the business just indicated by the above quotation, without the consent of the members first had and obtained upon full notice to them of the proposed change in the nature, plan and obligations of the corporation.

But this is not all. The company in its letter to Judge Snodgrass further says that his policy does not represent any real obligation on the part of the

company to pay to his beneficiaries the amount named in the face of the policy, but that he can be re-insured on the new plan in the new company, if he will furnish "a satisfactory medical examination," his present contract to be exchanged for one issued on a new basis, "the new policy to be written as of your original date of entry into the company *with the premium rate placed accordingly.* It will, of course, be *necessary* to provide for *the reserve accumulation* covering that period in order to give you a new policy keeping the same position as if you had originally taken out your insurance upon the legal reserve basis, and this reserve, which amounts to $996.30, can be met by placing a lien against the policy covering the same, which lien would stand as a loan under the policy bearing interest at the rate of five per cent. per annum, but carrying with it no personal liability for its payment *beyond its deduction from the proceeds of the policy*" (Certificate, p. 102; fols. 274, 275).

In other words, the Company proposes to collect from Judge Snodgrass premiums or assessments dating back over a period of ten years and amounting to $996.30 and before he can have the benefits of the incorporation of the new Company he must help it to provide the "legal reserve" required by Article II. of the Insurance Laws of New York in the case of old line level premium companies, by consenting to a "lien" charge against his policy!

Now, the complainant Snodgrass and all the other complainants and members of the Mutual Reserve Fund Life Association, by the terms of the charter of that Company under Chapter 175 of the Laws of 1883 and the conditions of their certificates of membership and policies of insurance, were a constituent part of the Association, agreeing to conduct it as a co-operative assessment company to do insurance business *in the future* as it had done in the past, and, from the letter just quoted, taken in connection with Article II. of the Insurance Law, Chapter 690, Laws of New York of 1892, it is too clear for successful

contradiction that the nature and business of the corporation was radically and fundamentally changed by the re-incorporation, and that the new company was, and is, engaged in a very different line of life insurance from that contemplated by the Act of 1883 and the charter of the Mutual Reserve Fund Life Association granted thereunder, to wit, it is now engaged in the kind of insurance "authorized under Subdivision 1 of § 70 of the Insurance Law" (Certificate, p. 3); and by § 3 of Article VI. of the charter of the Mutual Reserve Life Insurance Company, the directors are given authority "to reserve and set aside such an amount of the profits *in excess of the reserve required by law*, to be held and maintained, as shall in their judgment be for the best interests of the company" (Certificate, p. 107, fol. 290); a provision which clearly shows that a certain assessment must be made upon all members, old as well as new, to provide for a *legal reserve* "required by law," manifestly an additional burden upon the membership. And finally comes what in legislative parlance may be termed the "joker" in the charter of the new company, the provision of Article VIII. that "the company shall be entitled to have and enjoy all the rights, privileges and provisions of existing laws which might be included in this charter and enjoyed by it *if it were originally* incorporated under the 'Insurance Law' of this State" (Certificate, p. 107, fol. 291, Article VIII.). In other words, the Mutual Reserve Life Insurance Company is not a mere continuation of the Mutual Reserve Fund Life Association as a co-operative assessment company (upon any basis), but is a different kind of life insurance company to be treated for all future time as if originally incorporated under Article II. of the Insurance Law of 1892 instead of under Chapter 175 of the Laws of 1883 as substantially reenacted in Article VI. of the Insurance Law of 1892. If these be not fundamental changes in the

nature of the business and obligations of the corporation and its members, then it is impossible to conceive of changes sufficiently marked and radical to be "fundamental" within the meaning of the law.

CASES RELIED UPON BY RESPONDENTS.—Among the cases most relied upon by counsel for respondents in their brief in the court below are the following, which we think it proper to comment upon and distinguish:

Grobe v. *Erie Co. Fire Ins. Co.* (169 N. Y., 613; 39 App. Div. 183). Respondents' counsel seem to think this case of great authority in support of the validity of Chapter 722, Laws of New York of 1901, and the organization of the Mutual Reserve Life Insurance Company under that law. We look at the case in question very differently.

The *Grobe* case is made the subject of a most critical examination by the Supreme Court of Wisconsin in the course of the opinion in *Huber* v. *Martin* (127 Wis., 412, s. c., 115 Am. St. Rep., 1042), and to that review of the case we invite the attention of this Court (*see* 127 Wis., 440–444).

In the *Grobe* case there was no opinion by the Court of Appeals, the judgment being affirmed upon the opinion in the Appellate Division (169 N. Y., 613). We therefore have only the opinion of the Appellate Division as the basis of the judgment and to that we must look (39 App. Div., 183). From that opinion it appears that no fundamental change in the nature of the corporate business was made by the change from a mutual to a stock corporation; but the Appellate Division does hold that, notwithstanding Section 18 of Chapter 466, Laws of 1853, under which the company was organized, required the consent of the members to such change, the Legislature had power under the reserved constitutional authority to alter and amend, to permit such change from a mutual to a stock corporation by action of the directors

only (39 App. Div., 186, 187). In the opinion of the Court there is no citation of any case or authority in support of this conclusion and the discussion of the subject in the opinion is perfunctory in the extreme. The fact that the judgment was affirmed in the Court of Appeals gives the opinion some weight, but as the affirmance was without any opinion by the Court of Appeals, it is manifest that the importance of the constitutional questions involved did not attract the attention of that Court (169 N. Y., 613). The doctrine laid down in the opinion in the Appellate Division that the members of a mutual company have no interest in the assets of the company (39 App. Div., 186) and no property rights therein, is in conflict with common sense and the weight of authority.

"The property of the corporation belongs to its members."

Huber *v.* Martin, 127 Wis., 412, 432.
Temperance Mutual Benefit Assn. *v.* Home Friendly Society, 187 Pa., 38.
2 May on Insurance (3d Ed.), §§ 548, 549.

"The annual premiums not only pay the current risks but they constitute partial payments upon the full life term subject to forfeiture under certain stated conditions and the policyholders are peculiarly interested in the life of the company and the method of its management. In fact, as a practical proposition, although the policyholders technically occupy the relation of creditors to the corporation, they are the capitalists; they are the ones who furnish the money upon which the business is conducted. 'The insured parties are associates in a great scheme.'"

Lord *v.* Equitable Life Assurance Soc., 109 App. Div. (N. Y.), 252, 263.
Citing New York Life Insurance Co. *v.* Statham, 93 U. S., 24, 31.

"Each member is at the same time insurer and insured."

Commonwealth *v.* Mass. Ins. Co., 112 Mass., 116, 120–121.

"For all except corporate purposes they (the members of a mutual insurance company) were the beneficial owners of its assets. * * * The right of the corporation to hold its property in harmony with that situation and the rights of the members to have the same so held and administered were property interests resting on contractual obligations and so within the guaranty of the State Constitution as regards the passage of laws impairing the obligations of contract * * * and that of the National Constitution as regards the deprivation of property without due process of law, or denying to persons the equal protection of the laws."

Huber *v.* Martin, 127 Wis., 412, 438; s. c., 115 Am. St. Rep., 1023, 1041.

"The doctrine of the New York courts, cited to our attention from Grobe *v.* Erie Co. Mutual Ins. Co., 39 App. Div., 183, that 'the unascertained interest of a mere member of a corporation is not of sufficient significance to challenge attention of a court of equity to protect it. To permit corporations to be managed by suits in equity instituted in the interests of persons holding such indefinite rights, would produce intolerable confusion and end substantially in the destruction of such enterprises' has no place here. * * * It is entirely inconsistent, as it seems, with all the real functions of equity jurisdiction. The idea that a member of a corporation pecuniarily interested in the vindication or prevention of some wrong to it which it has not capacity to do for itself because of the attitude of unfaithful officers, cannot in behalf of himself and others similarly interested apply successfully at the door of equity because his interest as a single member is small, is unworthy to be entertained. It has not

found and cannot find any favor here. There is no such reproach upon our judicial system."

Huber *v.* Martin, 127 Wis., 412, 443; s. c., 115 Am. St. Rep., 1023, 1045.

The doctrine of the *Grobe* case on this point will scarcely commend itself to this Court as a proper basis of decision in a case like the one at bar, wherein, by insolvency, the corporate assets have become a trust fund for creditors and members. Again, the *Grobe* case cannot be reconciled with the later and much better reasoned case, also decided by the Appellate Division, but in a different department, of *Lord* v. *Equitable*, 109 App. Div., 252. In this last case several of the ablest lawyers of New York were ranged on opposite sides and the questions under consideration were fully presented and ably reviewed by the Court (109 App. Div., 253).

The conclusions there reached are irreconcilable with the decision of the *Grobe* case (which was cited in the dissenting opinion only) and are, as we submit, entitled to much greater weight in this Court because of the able way in which the authorities are reviewed and the conclusions of the Court arrived at.

Again, the statutory provisions under consideration in the *Grobe* case are not the same as the statutes to be passed upon in the case at bar, and we believe that upon the statutes here under consideration we have already shown that Chapter 722 of the Laws of 1901 is unconstitutional and void.

Hinckley vs. *Schwarzschild, etc., Co.* (107 App. Div., 470) is another case upon which respondents-appellees rely. The question there in issue was whether the Legislature, under the reserved power of amendment, could amend a law requiring *unanimous* consent of all stockholders to a change in capitalization only, so as to permit such change to be made upon the consent of *two-thirds* of the stockholders after full notice and through action by the stockholders in a regular corporate meeting (107 App. Div., 471–472). Surely there is nothing in

the decision of such a point as this that can be held to justify a legislative enactment such as Chapter 722, Laws of New York of 1901, under which directors, without the knowledge or consent of those they represent, are authorized to change the entire nature and business of the corporation in such a manner as to create a new corporation, with new powers and liabilities, including a radical change in the status and contracts of the members themselves?

Barnes v. *Arnold* (45 App. Div., 314; affd. without opinion by the Court of Appeals, 169 N. Y., 611) has no application upon its facts to the case at bar and is in no way analogous thereto. Hence, no discussion of the case is required. But it is pertinent to call attention to the case of *Rochester, etc., Co.* v. *Joel* (41 App. Div., 43), which is cited with approval in *Barnes* v. *Arnold*, and in which very interesting case it is held that under the reserved power of amendment the Legislature cannot pass a law the necessary effect of which is to impair a contract or take property from a corporation or its members without due process of law. The substance of the decision is that the Legislature cannot "under the guise of amendment or repeal, accomplish the absolute and total destruction of vested property rights." The *Joel* case cites in support of this doctrine the following pertinent passage from the leading and controlling New York decision:

"Whatever might have been the intention of the Legislature, or even of the framers of our Constitution, in respect to the effect of the power of repeal reserved in acts of incorporation, upon the property rights of a corporation, such power must still be exercised in subjection to the provisions of the Federal Constitution. * * * We think that there are no reported cases in which the judgment of the Court *has ever taken the franchises or property of a corporation from its stockholders and creditors, through the exercise of the reserved power of amend-*

ment and repeal" (People *v.* O'Brien, 111 N. Y., 1, 36, 37.)

Mayor v. *Twenty-Third St. Ry. Co.* (113 N. Y., 311) is not in conflict with the doctrines of the *O'Brien* and *Joel* cases just cited, and lays down no broader rule than that "the alteration under such reserved power must, however, be reasonable, and it must always be legislative in its character, and consistent with the scope and objects of the corporation as it was originally constituted" (113 N. Y., 317).

McKee v. *Chautauqua Assembly* (C. C. A., 130, Fed. Rep., 536). This case is in no sense a controlling authority in this court; nor is it upon the facts analogous to the case at bar. The statutes here in controversy were not involved and the statutes under consideration in that case were of an entirely different character from those under consideration in the case at bar. In the *Chautauqua* case the organization was under statutes providing for the incorporation of companies of a *quasi* public nature for "benevolent, charitable, scientific and missionary purposes" (130 Fed., 536), and the corporation was not one for the private gain and pecuniary advantage of its members. It was not a contractual business corporation but a charitable, benevolent association for the public good. The conclusion of the Court was that the changes made by the legislative act "are consistent with the original object of the corporation and merely enumerate more specifically "the other moral and religious purposes which, by the articles of association, were declared to be within the contemplation of the incorporation" (130 Fed., 540). The other changes held by the case under consideration to be within the reserved legislative power of amendment were all changes relating to the control and administration of the corporation as between the State and the corporation, and in no instance effected a change in the nature and methods of the corporation or the vested contract rights of its members as between themselves (130 Fed., 540, 541). As to the gravest

question involved it was not decided except on the principle of acquiescence and estoppel, because for several years prior to the passage of the act, "the three corporations had been practically one" and the act merely confirmed a consolidation to which the members had previously practically assented for years (130 Fed., 540–541).

The case was not considered applicable by the Court that decided it because the same Court certified the case at bar to this Court.

And after all the great questions arising in this case are questions for this Court to determine under the provisions of the Constitution of the United States which the complainants invoke, and none of the cases upon which respondents rely deal with the same legislative acts or the same state of facts—which indeed are quite anomalous—presented by the record in the case at bar.

THE "VALUED" POLICY QUESTION: One point out of many heretofore adverted to, quite clearly distinguishes the case at bar from all preceding cases, namely the "valued" policy clause in Chapter 722, Laws of New York of 1901. That clause reads:

"All contracts, policies and certificates issued by such corporations prior to accepting the provisions of this chapter shall be valued as *one year term* insurance *at the ages attained*" (Chapter 722, Laws of 1901, Vol 2, pp. 1780, 1781; Appendix, p. 25).

The purpose of this clause was to fix the value of the policies of members upon re-incorporation so as to establish the basis upon which a *legal reserve*, not theretofore required from the members, could be *fixed* for the future and *assessed* for the past upon the policies of the several members. The valuation thus provided for is effective for the purpose of imposing a new obligation *in the nature of an investment by way of a legal reserve* upon the members without imposing any added burden upon the new company to pay to their estates or beneficiaries the full face value of

their policies at death. In brief, this clause taxes the members for the purposes of a legal reserve upon the full face value of their policies, while leaving the re-incorporated company free to contend that the policies are not valued for the purposes of payment; and such will be, as it always has been, its contention.

Mutual Reserve Fund Life Assn. *v.* Hamlin, 139 U. S., 297.

McCoy *v.* Mutual Reserve Life Insurance Co., 84 App. Div., N. Y., 315.

Here, then, is a consent required to a change in the contract between the members and the corporation as a condition precedent to re-incorporation, and the Legislature was without power to confer the right to consent to this change upon the directors alone, and hence, Chapter 722 of the Laws of New York of 1901 is unconstitutional as impairing the obligation of contracts between the members of the Mutual Reserve Fund Life Association and that corporation. That is, to make it a condition precedent, as Chapter 722 of the Laws of New York of 1901 does, to the re-incorporation of an assessment association as a level premium company under that act that the policies of its members, then entire life contracts, shall be "valued" as one year term insurance only, in order to fix a charge against those policies for the creation of a legal reserve not contemplated by the policies themselves, is to make essential the consent of the members of the assessment association to the change. A change by which their policies are valued as one year term insurance only for the purposes of such reserve, when, as between the corporation and the policyholders they are whole life policies and not contracts of assurance for a single year (New York Life Insurance Co. *v.* Statham, 98 U. S., 24, 30; Lord *v.* Equitable Life Assurance Soc., 109 App. Div., 252, 260; Commonwealth *v.* Wetherbee, 105 Mass., 149, 160, per Gray, *J.*).

The foregoing statement of the object and effect of the "valued" policy clause in Chapter 722, of the Laws of New York of 1901, amending § 52 of the Insurance Law so as to permit the re-incorporation of assessment associations existing under Chapter 175, of the Laws of New York of 1883, and Article VI. of the Insurance Law, as old line level premium companies having a legal reserve under Article II. of the Insurance Law, is conclusively shown by the amendment of Chapter 722 of the Laws of 1901 and § 52 of the Insurance Law by the provisions of Chapter 326 of the Laws of New York of 1906 (pp. 772, 773) which adds to the section the qualification and limitation that "no life insurance corporation shall hereafter be permitted to avail itself of the provisions of this section unless it shall hold for all its outstanding policies or certificates assets equal in value to the minimum reserve required by § 84 of the Insurance Law."

It seems unnecessary to prolong the discussion of this case. We believe that we have brought to the attention of the Court every material statutory provision and every judicial decision of importance applicable to the questions certified to this Court by the Circuit Court of Appeals, and we cannot do better, in closing, than to quote the pregnant language of the Court of Appeals of New York in the leading case decided by that Court upon questions analogous to those at bar. In *People* v. *O'Brien* (111 N. Y., 36) it is said:

"The contention that securities representing a large part of the world's wealth are beyond the reach of the protection which the Constitution gives to property, and are subject to the arbitrary will of successive legislatures, to sanction or destroy at their pleasure or discretion, is a proposition so repugnant to reason and justice as well as the traditions of the Anglo-Saxon race in respect to the security of rights of property, that there is little reason to suppose that it will ever receive the sanction of the judiciary,

and we desire in unqualified terms to express our disapprobation of such a doctrine. Whatever might have been the intention of the Legislature or even of the framers of our Constitution in respect to the effect of the power of repeal reserved in acts of incorporation, upon the property rights of a corporation, such power must still be exercised in subjection to the provisions of the Federal Constitution."

VII.

UPON THE FACTS OF THIS CASE AND THE FOREGOING PROPOSITIONS OF LAW, WE SUBMIT THAT THE FOUR QUESTIONS CERTIFIED TO THIS COURT BY THE CIRCUIT COURT OF APPEALS SHOULD EACH BE ANSWERED IN THE AFFIRMATIVE.

Certificate, pp. 5, 6.

Regretting that this statement, brief and argument have necessarily extended to such length, we nevertheless believe that the great importance of this case justifies a complete presentation of every question involved, in order that this Court may now finally determine what limitation, if any, rests upon the Legislatures of the States in the application of the reserved power of amendment to corporate laws, corporate charters and the fixed contract rights of corporate members.

Respectfully submitted,

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Supreme Court of the United States,

OCTOBER TERM, 1907.

NUMBER 45.

THOMAS POLK *et al.*,
Complainants-Appellants,

vs.

MUTUAL RESERVE FUND LIFE ASSOCIATION OF NEW YORK and MUTUAL RESERVE LIFE INSURANCE COMPANY,
Defendant-Appellee.

Certificate from the United States Circuit Court of Appeals for the Second Circuit.

BRIEF FOR APPELLEE.

Statement of the Case.

This is a suit in equity brought for the appointment of a receiver and the winding up of the defendant corporation, which is sued in both the above names. A demurrer to the original bill of complaint was sustained by the Circuit Court (119 Fed., 491). An amended bill of complaint was thereafter filed. Exceptions to the amended bill for scandal and impertinence were filed and referred to a Master.

The Master's report allowed a number of the exceptions. The Circuit Court confirmed the Master's report as to the exceptions allowed thereby, and allowed a number of additional exceptions, which had been disallowed by the Master (128 Fed., 524). To the amended bill of complaint, as thus expurgated, the defendant demurred. The demurrer was sustained and the bill dismissed (137 Fed., 273). From that decree the complainants appealed to the Circuit Court of Appeals. Upon the argument before that Court it appeared that there were presented certain questions arising under the Constitution of the United States. The Circuit Court of Appeals for the Second Circuit has consistently adhered to the position that it possesses no jurisdiction to decide questions arising under the Constitution of the United States (United States vs. Lee Yen Tai, 113 Fed., 465; *In re* Abbey Press, 134 Fed., 51, 55). In accordance with its invariable practice, therefore, that Court certified to this Court the constitutional questions presented by the complainants.

THE CERTIFICATE.

The statement of the case certified by the Court below discloses, in substance, the following facts (pp. 1, 2):

The complainants became members and policyholders of the Mutual Reserve Fund Life Association on various dates from 1886 to 1900. Said Association was a corporation organized in 1881 under Chapter 267 of the laws of 1875 of the State of New York, for the purpose of the mutual benefit of the members by means of voluntary contributions. In 1883 the corporation amended its certificate of incorporation under Chapter 175 of the laws of 1883 of the State of New York (repealed in 1892 by the Insurance Law). The amended certificate of incorporation provided for the transaction of life insurance upon the co-

operative or assessment plan, and the issuance of certificates of membership or policies whereby, upon the decease of a member, money or other benefit should be paid or rendered by the corporation to the legal representatives of such member or the beneficiary designated by such member, which money or benefit was to be derived from voluntary donations, admission fees, dues and assessments. The corporate powers continued unchanged from 1883 until April 17, 1902. On the latter date an amended charter was adopted under and pursuant to the provisions of Chapter 722 of the laws of 1901 of the State of New York, which act was an amendment of Section 52 of Chapter 690 of the laws of 1892, known as the Insurance Law. This amended charter of 1902 was adopted and filed pursuant to a resolution of the Board of Directors and was duly certified by the Attorney-General and the Superintendent of Insurance of the State, in accordance with the requirements of the Insurance Law; and thereupon the Superintendent of Insurance consented to the transaction of the business of life insurance by the corporation as in said amended charter provided. By the amended charter the name of the corporation was changed to "Mutual Reserve Life Insurance Company." The amended charter authorized the corporation to make all kinds of insurance upon the lives or the health of persons authorized by Subdivision 1 of Section 70 of the Insurance Law (p. 3). The bill of complaint claims no irregularity or defect in the procedure by which the amendment of 1902 was effected, other than that the consent of the policyholders was not obtained (p. 3).

The complainants charge that if Chapter 722 of the laws of 1901 be construed as authorizing the said amendment of the corporation's charter by the officers and directors without the consent of the policyholders, it is in contravention of Section 10, Article 1, of the United States

Constitution, as being a law impairing the obligation of contracts, and in contravention of the provisions of the Fourteenth Amendment to the United States Constitution, prohibiting the deprivation of property without due process of law, and the abridging of privileges and immunities of citizens of the United States.

The material provisions of the policies and applications of the complainants are made part of the certificate as Exhibits 1 and 2 thereof (pp. 6 to 10). From these exhibits it appears that each of the policies held by the complainants constitutes the usual insurance contract to pay to a named beneficiary of the policyholder a certain sum of money upon the death of the policyholder, in consideration of the payment of dues and assessments during the continuance of the policy. The amount of the dues and assessments is not fixed by the policy, but is to be determined by the Executive Committee and the Board of Directors. It is provided that a part of said assessments shall be set apart for a reserve or emergency fund in which the policyholders contributing thereto shall be entitled to benefits, to be determined by the actuary, after the continuance of their policies in force for fifteen years. The policies and applications contain no other provisions which are material to this case.

The certificate of the Court below also further states that the amended bill alleges that at the time of the amendment of the charter in 1902, the Association was insolvent, and that the officers and directors devised the scheme for the amendment of the charter for the purpose of defrauding the complainants and other policyholders of their membership rights and privileges; that after the amendment of the charter a premium call was sent out by the defendant, which is alleged to have been an entire departure from the contract obligations of the policyholders; and that the corporation has been for several years unable to

pay its obligations to the members or beneficiaries of membership contracts, and has only been able to preserve the appearance of solvency by scaling down the claims of beneficiaries, through misrepresentations and fraud (p. 4). These allegations appear to have no relevancy whatever to the constitutional questions, certified. Furthermore, the statement of these allegations in the certificate, segregated from the remainder of the bill of complaint, conveys the impression that the insolvency of the corporation and fraud on the part of its officers were well and sufficiently pleaded. The contrary is the fact. The bill of complaint, taken as a whole, does not show that the corporation was insolvent or that any frauds were perpetrated by its officers.

BILL OF COMPLAINT.

The Court below has transmitted the bill of complaint to this Court "for the possible convenience of the Court" (p. 5). In view of the allegations of insolvency and fraud, referred to in the certificate, it is necessary that a brief analysis of the bill of complaint be made.

The amended bill of complaint, with its numerous exhibits, is printed in full in the record (pp. 11 to 124, inclusive), and it will be observed that a substantial portion of it is printed either in italics or small capitals. Although the record does not show the significance of this method of printing, it is proper to state that the bill was so printed for the use of the Court below by the complainants for the purpose of indicating the matter expunged under the exceptions for scandal and impertinence. The matter printed in italics indicates the allegations of the bill which were stricken out by the Master's report as confirmed by the Circuit Court. The matter printed in small capitals indicates the additional matter stricken out by the Circuit Court under some of the exceptions which had not been

allowed by the Master. There appears to be no reason why the amended bill should have been transmitted to this Court in its unexpurgated form, since the exceptions for scandal and impertinence are not before this Court for decision. It is not claimed by the appellee that the questions before this Court would have been different if the expurgated bill had been certified.

The bill of complaint, while voluminous, contains few allegations of fact. It abounds in conclusions, legal arguments and rhetorical denunciation, all frequently repeated. Upon analysis, the theory of the pleader seems to be that the complainants, as holders of unmatured policies of insurance, are entitled to a decree appointing receivers and dissolving the corporation and finally administering its affairs upon two grounds: first, that the corporation is insolvent; second, that the amendment of the corporation's charter, effected in April, 1902, was illegal in that it operated to deprive the policyholders of contract and property rights.

The bill alleges that the complainants are policyholders and members of the Association in good standing (Record, pp. 12, 13); that, as members, the complainants are entitled to share *pro rata* in the proceeds of the estate of the Association because of its insolvency and the abandonment of its corporate business (p. 14); that the Association having been illegally and fraudulently deprived of its assets, is now insolvent, so that its assets have become a trust fund for policyholders (p. 15); that complainants demand their full *pro rata* interest in the assets of the corporation (p. 17); that unless the assets of the corporation are taken in charge and administered by the Court they will be wasted (p. 17). The organization of the corporation in 1881 and its reorganization in 1883 are alleged in detail (pp. 18, 19; Exhibits 1 and 2). The bill characterizes the Mutual Reserve Life Insurance Com-

pany as a *de facto* corporation organized under Section 52 of the Insurance Law, as amended by Chapter 722 of the laws of 1901 (pp. 20 and 21), but the subsequent allegations of the bill and the exhibits show that the Mutual Reserve Life Insurance Company is not a new or separate incorporation and does not purport to be, but that the Mutual Reserve Fund Life Association, on April 17, 1902, merely amended its charter under Chapter 722, laws of 1901, to accept the provisions of the Insurance Law, and that by said amended charter the name of the corporation was changed to "Mutual Reserve Life Insurance Company" (Exhibit 7, pp. 103 to 115, inclusive). The bill does not pretend to indicate any defect or irregularity in the procedure adopted to effect this amendment, except that it is alleged that the policyholders did not consent to the amendment and that no meeting of the policyholders was called to consider the amendment before its adoption (pp. 23, 25). No claim appears in the bill that Chapter 722 of the laws of 1901 contained any provision requiring that the consent of policyholders should be obtained. It is alleged that this re-incorporation, so-called, was a scheme secretly and fraudulently devised by the officers of the corporation to deprive complainants and other policyholders of their membership rights and privileges (p. 29); and it is charged as a matter of law that Chapter 722 of the laws of 1901, if construed as permitting the amendment of the charter without the consent of policyholders, violates various provisions of the United States Constitution in that it impairs the contract obligations of the complainants and deprives them of their property without due process of law, and abridges their privileges and immunities as citizens of the United States (pp. 30, 31). Not the slightest attempt, however, is made to show that the amendment of the charter in any way affected the membership rights and privileges or the contract obligations

or the property rights of the complainants or their privileges and immunities as citizens of the United States. In all the bill of complaint there can be found no indication of any detriment or injury to the complainants by reason of the amendment of the charter.

It is several times alleged parenthetically and argumentatively that the corporation is, or was at different times, insolvent (pp. 14, 15, 21, 33, 41, 53, 63), or has abandoned its corporate business (pp. 14, 63), or is incapable of carrying out its business objects (pp. 34, 64). This charge appears to be a conclusion based upon the supposed confiscation of the assets of the Association by the so-called new corporation, the Mutual Reserve Life Insurance Company (pp. 15, 63, 69). The charge of the abandonment of the corporate business is refuted by numerous other allegations in the bill which show that the corporation is still a going concern (p. 52). The formal and naked allegations of insolvency, even if they were not obviously conclusions based upon the theory of the transfer of the assets of the Association to a new corporation, would be completely overcome by various other matters alleged. It is alleged that the corporation has practically no creditors except its policyholders and that its assets are sufficient to discharge all death claims, and that after the payment of such claims there may remain a sum for distribution among all the members of the corporation (pp. 38 and 39). It is also alleged that the assets aggregate in value the sum of $2,000,000 or more, and that the assets, after paying all debts, will be sufficient to pay complainants and all other policyholders a large proportion of their claims and demands (p. 17). These "claims and demands" appear to be for the return to all existing policyholders of the entire amounts paid by them to the corporation (p. 39). It is doubtful if there is any life insurance company in the world which, after paying all its debts, could return to its

existing policyholders the whole amount which they have paid in; the inability to do this is obviously not the test of insolvency in the case of an insurance company. A financial statement of the corporation certified as correct by the State Superintendent of Insurance is annexed to the bill as Exhibit 8 (p. 122), which shows a surplus of assets over liabilities of nearly half a million dollars, and that, too, after including among the liabilities of the corporation an item of over $4,000,000 as the present worth of all outstanding policies. Some items on the asset side of this statement are criticised in detail in the bill (pp. 41 to 48); but it is unnecessary to consider this attempt to falsify the items in this financial statement. The criticisms made, if well founded and sufficiently pleaded as facts, which they are not, would tend only to indicate that the Company had not sufficient reserve to satisfy the Insurance Department of its ability to meet its future and ultimate obligations, computing those obligations on the basis of the present worth of all policies outstanding. The criticisms contained in the bill might properly be presented to the Insurance Superintendent of the State as affecting his decision upon the question of continuing the Company's license to do business, but they do not tend to show present insolvency. There is no proper allegation of the inability to pay present matured obligations. On the contrary, as already indicated, it is alleged that the Company is able not only to discharge all its existing liabilities, but to distribute a substantial amount to all existing policyholders.

The bill originally contained many allegations as to the diversion and misappropriation of funds by officers of the Company, in ancient and modern times (pp. 53 to 61), which might have been appropriate in an action against such officers individually, but most of these allegations were eliminated by the Circuit Court on the exceptions for scandal and impertinence.

Some miscellaneous and disconnected accusations and allegations are interspersed through the bill by way of vituperation, for example: that, after the so-called re-incorporation, the officers of the corporation wrote false and fraudulent letters to complainants intended to deceive them as to the fact and effect of the so-called re-incorporation (p. 27); that, during 1901, the corporation, in settling with policyholders, paid them less than the face amount of their claims and less than the amounts to which they were entitled (p. 34); that the corporation has been barred from business in many States (p. 34); that its business has decreased (p. 51); that the officers have made false reports (p. 53); that the officers have abstracted large sums from the treasury under illegal and fraudulent contracts (p. 53); that the officers of the Mutual Reserve Life Insurance Company have no right to make premium calls upon complainants as policyholders of the Mutual Reserve Fund Life Association (p. 67); and that the reserve or emergency fund held by the Central Trust Company in 1894 has been wasted (p. 50).

These miscellaneous charges do not require consideration. They are not sufficiently pleaded to constitute causes of action in themselves and are evidently not intended as independent grounds for relief. Their irrelevancy to the two primary charges and theories of the bill are too obvious to require comment.

QUESTIONS CERTIFIED.

The Circuit Court of Appeals for the Second Circuit has certified four questions, which are as follows (p. 5):

1. Does the amended bill of complaint disclose that any contract obligations between the complainants and the defendant Mutual Reserve Fund Life Association were impaired by the incorporation of the Mutual Life Insurance

Company in 1902 pursuant to the provisions of Chapter 722, Laws of 1901 of the State of New York, and the transfer to said Company of the assets, properties and membership of the Mutual Reserve Fund Life Association?

2. Does the amended bill of complaint disclose and show that Chapter 722, Laws of 1901 of the State of New York, was in violation of Article I, Section 10, of the Constitution of the United States, as impairing the obligations of a contract between the defendant Mutual Reserve Fund Life Association and complainants in so far as it authorized the re-incorporation of said Association as the Mutual Reserve Life Insurance Company?

3. Does the amended bill of complaint disclose that Chapter 722, Laws of 1901 of the State of New York, is in violation of the provisions of Article XIV of the Amendments to the Constitution of the United States in this, that the re-incorporation of the Mutual Reserve Fund Life Association as the Mutual Reserve Life Insurance Company, and the changes in the charter powers and franchises of the corporation, have the effect of depriving complainants of their property without due process of law and of their vested contract rights and privileges and of their property rights under their contracts and agreements with respondent Association?

4. Does the amended bill of complaint disclose that Chapter 722, Laws of 1901 of the State of New York, was in violation of those provisions of Article XIV of the Amendments to the Constitution of the United States which provide that no State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law nor deny to any person within its jurisdiction the equal protection of laws?

The first two questions above quoted present the same proposition, namely, the impairment of contract obligations. The third question certified differs from the first and second questions only in that the unconstitutionaliy of the statute is raised with reference to the Fourteenth Amendment, as operating to take the property of complainants without due process of law. For the purposes of this case a separate discussion of these questions is unnecessary.

The fourth question certified, so far as it relates to deprivation of property without due process of law, is identical with the third question. So far as it relates to privileges or immunities of citizens of the United States, or to deprivation of life or liberty without due process of law, or to a denial of the equal protection of the laws, the question is not even remotely presented or suggested by anything contained in the record, and no argument or discussion thereof will be made on behalf of the appellee.

POINT I.

The record negatives the fact, apparently assumed in the first question certified, that the Mutual Reserve Life Insurance Company is a separate and distinct corporation to which the assets of the Mutual Reserve Fund Life Association have been transferred.

The first question certified inquires whether any contract obligations of complainants were impaired by the incorporation of the Mutual Reserve Life Insurance Company in 1902 and the transfer to said Company of the assets, properties and membership of the Mutual Reserve Fund Life Association. The form of this question apparently assumes as a fact the contention heretofore made by the appellants that the Mutual Reserve Life Insurance Company is a new and distinct corporation. This contention has been made for the purpose of giving color to the theory that the Association is insolvent, by allegations that the so-called new corporation has fraudulently converted all the property of the Association and that the Association has abandoned its business. The record shows that there is no foundation for this contention. The question certified must be read in connection with the accompanying statement of facts, and when so read it is obvious that the apparent assumption of fact is not intended to be taken literally.

The defendant under its charter as amended in 1883 was empowered to transact insurance business upon the co-operative or assessment plan (p. 2). On April 17, 1902, an amended charter was adopted (p. 2). The material provisions of the amended charter are embodied in the certifi-

cate made by the Court below (pp. 2 and 3). The amended charter certifies that the Mutual Reserve Fund Life Association "has duly accepted the provisions of * * * the Insurance Law and the amendments thereto, and in conformity with the same has duly adopted the following Amended Charter." Then follow, among others, articles authorizing the corporation to engage in all kinds of life insurance, changing the name to "Mutual Reserve Life Insurance Company," and providing that the Company shall be entitled to have and enjoy all the rights, privileges and provisions of existing laws which might have been included in the charter if it were originally incorporated under "The Insurance Law," that is, under Chapter 690, Laws of 1892. The facts certified by the Court below, therefore, show that the Mutual Reserve Life Insurance Company is not a new and distinct corporation, but the same corporation operating with additional powers by virtue of an amended charter and under a new name.

The bill of complaint contains nothing to the contrary. The proceedings taken for the amendment of the charter are made part of the bill (Exhibit 7, pp. 103 to 115). The Superintendent of Insurance, whose certificate concluded said proceedings, certifies his consent, not to the transaction of business by a new corporation, but to the transaction of business by an existing company under an amended charter (p. 114). The resolution of the Board of Directors preliminary to the filing of the charter (p. 112), is to the effect "that the Mutual Reserve Fund Life Association do, and it hereby does, accept the provisions of Chapter 690 of the Laws of 1892, and the various amendments thereof, and adopts the foregoing amended charter pursuant thereto."

These proceedings, as the bill alleges, were taken under Section 52 of the Insurance Law, as amended by Chapter 722 of the laws of 1901 (pp. 20, 21). Chapter 722 of the

laws of 1901 does not provide for or permit the organization of a new corporation. It refers by its terms only to existing domestic corporations and provides that any such existing corporation may accept the provisions of the Insurance Law, and amend its charter to conform to the same, and may then enjoy all privileges of existing laws as if it had been originally incorporated under the Insurance Law of 1892. It expressly states that such corporation "is declared to be a continuation of such corporation which existed prior to such reincorporation."

The bill itself, therefore, shows that there were not two separate legal entities, but that one corporation is sued under two names, its original name and its present name. The bill contains no positive allegation or charge that there are two distinct legal entities and it would make no difference if such a positive charge were made in view of the other facts alleged. The bill contains nothing upon which the demurrer can operate as an admission of the separate legal existence of two corporations.

POINT II.

The amendment of the charter in April, 1902, was duly and regularly effected pursuant to Chapter 722, Laws of 1901. The consent of policyholders or members to the amendment was not required by that statute.

I.

CHAPTER 722, LAWS OF 1901, DID NOT REQUIRE CONSENT OF THE POLICYHOLDERS. IN NO OTHER RESPECT IS THE REGULARITY OF THE PROCEDURE CHALLENGED BY APPELLANTS.

Section 52 of the Insurance Law of New York (Chapter 690 of the laws of 1892), as amended by Chapter 722 of the laws of 1901, provides in part as follows:

> "Any domestic corporation existing or doing business at the time this chapter takes effect, may, *by a vote of a majority of its directors or trustees accept provisions of this chapter and amend its charter* to conform with the same, upon obtaining the consent of the superintendent of insurance thereto in writing; and thereafter it shall be deemed to have been incorporated under this chapter.
>
> * * * * * *
>
> This section shall apply to insurance corporations organized under or subject to article six of the insurance law as well as to insurance corporations organized under special charters or articles two and ten of the insurance law."

The act is explicit in its permission that the amendment may be "by a vote of a majority of its directors or trustees."

This act definitely and expressly includes all domestic corporations existing or doing business at the time the chapter took effect. It provides expressly that it shall apply to corporations organized under or subject to Article Six of the Insurance Law. The defendant, though organized under Chapter 175, laws of 1883, was subject to Article Six of the Insurance Law, being a corporation upon the co-operative or assessment plan (Chapter 690, Laws of 1892, Article VI, Sections 200 and 201). Appellants suggest (Appellants' Brief, p. 23) that Chapter 722, Laws of 1901, did not authorize the amendment of defendant's charter, because that Act purported only to amend Section 52 as already amended by Chapter 725, Laws of 1893, and Section 1 of the latter Act contained a general provision that nothing in the subsequent sections should "apply to any insurance corporation organized under Articles six or seven of the insurance law." Appellants refer to the defendant as a corporation *existing under Article six* of the insurance law and so within this exception. But Chapter 725, Laws of 1893, excepted only insurance corporations "*organized* under Articles six and seven." The defendant corporation was not *organized* under Article six of the insurance law although it was subject thereto. Chapter 722, Laws of 1901, expressly provided that Section 52 as amended should apply to insurance corporations "*organized under or subject to* Article six." Of course, this specific provision in the later act repealed necessarily the general provision in Section 1 of Chapter 725, Laws of 1893, insofar as Section 52 of the insurance law was concerned.

The bill of complaint makes no other criticism of the procedure by which the amendment was effected (p. 3).

II.

CHAPTER 722, LAWS 1901, DID NOT BY OMITTING ANY PROVISION FOR CONSENT OF MEMBERS CHANGE THE PREVIOUS LAW. NO PRIOR LAW REQUIRED THE CONSENT OF MEMBERS IN SUCH A CASE.

The general history of Section 52 of the Insurance Law of New York is in brief outline as follows:

Chapter 463 of the laws of 1853 provided for the incorporation of life and health insurance companies. It was amended by Chapter 328 of the laws of 1860, and Section 3 of the latter Act was as follows:

> "Any company organized under the acts to which this is an amendment, having first obtained the consent of the Superintendent of the Insurance Department thereto in writing, may, *by a vote of a majority of their directors*, accept the provisions of this act, or any of them and amend their charter to conform with the same."

The above provision of the Act of 1860 remained unchanged until the adoption of the Insurance Law, Chapter 690 of the laws of 1892. This provision was therefore in effect when the defendant corporation was organized in 1881 and reorganized in 1883.

The Insurance Law of 1892 repealed Chapter 328 of the Laws of 1860, and enacted Section 52, which read in part as follows:

> "*Reorganization of existing corporations and amendment of certificates.*—Any domestic insurance corporation existing or doing business at the time this chapter takes effect, and not incorporated under any law repealed by this chapter, may, *by a vote of a majority of its directors*, accept the provisions of this chapter and amend its charter to conform with the same, upon obtaining the consent of the superintendent of insurance thereto in writ-

ing; and thereafter it shall be deemed to have been incorporated under this chapter, * * *"

By Chapter 725 of the laws of 1893, the Legislature amended Section 52 of the Insurance Law to read as follows:

> "*Reorganization of existing corporations and amendment of certificates.*—Any domestic corporation existing or doing business at the time this chapter takes effect may, *by a vote of a majority of its directors or trustees,* accept provisions of this chapter and amend its charter to conform with the same, upon obtaining the consent of the superintendent of insurance thereto in writing; and thereafter it shall be deemed to have been incorporated under the chapter, * * *"

After the enactment of Chapter 725 of the laws of 1893, Section 52 of the Insurance Law remained without further change until the enactment of Chapter 722 of the laws of 1901. The amendment of 1901 retained unchanged the provision for an amendment by vote of a majority of the directors.

Even Chapter 175 of the laws of New York of 1883, the law under which the charter was first amended, contained no requirement that the consent of the members or policyholders should be obtained; but, on the contrary, the provisions of that statute were expressly to the effect that such a corporation as this then was might reincorporate by filing a declaration, signed and acknowledged by a majority of its directors.

> See Chapter 175 of the Laws of New York of 1883, Section 12.

It appears, therefore, that the manner prescribed by Chapter 722 of the laws of 1901 for amending the charter of this corporation, *i. e.*, by vote of a majority of its Directors and upon the consent of the Superintendent of Insur-

ance was the same as had been prescribed by Chapter 328 of the laws of 1860, more than forty years before, and was the same as that prescribed in Chapter 175 of the laws of 1883, under which the corporation obtained its amended charter, and which was in force when all these complainants became members. In none of the general laws of the State has there been any requirement for obtaining the consent of members before amending the charter.

The appellants' brief makes frequent reference to Chapter 690, laws of 1893. A reference thereto originally contained in the bill of complaint (p. 24), was struck out. That act has nothing to do with this case. The defendant corporation did not proceed under this Act of 1893 and makes no claim to have complied with its provisions. Chapter 690, laws of 1893, is a special permissive act authorizing assessment insurance companies to reincorporate *as stock companies* upon certain conditions, among others, that a majority of the members approve the action. That act was not appropriate to the relief desired by the defendant corporation. It has not reincorporated as a stock company, but remains a mutual company. This Act of 1893, Chapter 690, should not be confused by reason of the coincidence of chapter numbers with Chapter 690, laws of 1892, which is the general Insurance Law of the State.

POINT III.

The record does not disclose that any contract obligations or property rights of the appellants have been impaired or affected by the amendment of the corporation's charter. No change was made or attempted in the outstanding contracts or policies.

The original charter of this corporation, dated January 7, 1881, Exhibit 1, p. 81), defined its object to be "the mutual benefit of ourselves and all others who may become members of the society, by providing benefits for families and others dependent upon such members by means of voluntary contributions * * *"

The amended charter, Exhibit No. 2 (p. 84), dated December 8, 1883, which was the charter in force when all these complainants became members, defined as the object of the corporation "the transaction of life insurance upon the co-operative or assessment plan" and defined the manner in which the corporate powers were to be exercised, being, in substance, by the issue of certificates of membership, policies or other evidences of interest to, and promise or agreement with, its members.

By the amended Charter of 1902 (p. 3) the object of the company is thus declared: "The business of the company shall be insurance upon the lives or the health of persons, and all and every insurance appertaining thereto, the making of endowments, and the granting, purchasing and dispensing of annuities, such kind of insurance being authorized under Subdivision One of Section 70 of 'The Insurance Law.'"

By Article VI, Section 1 (p. 3), of the amended Charter

of 1902, it is provided that the company shall have no capital stock, but shall be a mutual company.

Thus the effect of the amendment of 1902 was to broaden the business of the company by empowering it to transact the business of life insurance generally, as that business is defined by the Insurance Law of New York. In other words, the effect of the amendment of 1902 was merely to authorize the corporation in its future business to issue new and different forms of policies.

This change is attacked as being in violation of the Constitution of the United States, as impairing the obligations of the members' contracts and taking from them their property without due process of law.

The Act of 1901 provides that upon compliance with its requirements "the corporation shall thereafter be deemed to possess the same powers and be subject to the same liabilities as if such amended charter or certificate had been its original charter or certificate of incorporation, *but without prejudice to* any pending action or proceeding or *any rights previously accrued.*"

Thus by the very language of the Act it is declared that no proceedings taken thereunder shall prejudice any rights which may have previously accrued. And the corporation itself recognized, as appears by the bill, the fact that no change could be legally made in the existing contracts and policies, for in the notice to policyholders sent out soon after the amendment of the charter was effected (pp. 23, 24), it is expressly stated that: "This reincorporation, while ensuring the stability of the company, makes no change in your policy."

It is impossible to discover from the bill of complaint any right of the complainants which has been in the slightest degree affected by this change in the corporation's charter. There is not the slightest attempt to show any change that has been made in their contract relations with

the company. It does not appear that the company has sought to impose heavier assessments upon the complainants under the charter amendment, or that any benefit secured by their policies has been withheld.

The bill alleges (p. 20) that the rights, duties, obligations and status of complainants and all other members and policyholders in respondent association are such and such only as arise under and by virtue of Chapter 267, laws of 1875, and Chapter 175, laws of 1883, and out of the original certificate of incorporation and the certificate of incorporation as amended in 1883. The provisions of said statutes and of the certificates of incorporation as well as the provisions of the complainants' policies will be scrutinized in vain for any right of the policyholders which has been affected by the amendment of the charter.

It is unnecessary to add in view of these circumstances that the charges that the letters written by the corporation's officers explaining the amendment of the charter were "false, fraudulent and misleading," and that the amendment was a scheme secretly and fraudulently devised to deprive complainants of their rights (p. 27) do not reinforce the bill in the respect now under consideration, or supply the missing allegations.

The alleged scaling of death claims (p. 34), the item of liens appearing in the financial report of the Insurance Department (pp. 41-42), and the alleged conversion of the reserve fund deposited with the Central Trust Company (p. 50) have in the arguments below been referred to as invasions of complainants' contract rights. Aside from the consideration that not one of these matters is pleaded as a fact in the bill, but that all are grossly conclusions of law, there does not appear to be the slightest connection between these alleged matters and Chapter 722, laws of 1901, or the proceedings taken by the corporation under the statute. To use these matters as a basis for the con-

stitutional argument they must be dragged bodily from their context in the bill and employed with a totally different meaning from that with which they were pleaded. It surely is not seriously claimed that Chapter 722, laws of 1901, contemplates, permits or occasions these alleged wrongs, or that they are committed by the corporation because of or through the instrumentality of the amended charter.

There is, therefore, nothing in the record indicating that any specific contract obligations or property rights of the complainants have been in any way affected by the amendment of the defendant's charter.

Much space in the appellants' brief (pp. 36 to 47) is devoted to an attempt to show wherein the amendment of the charter affected the policyholders' contracts and property rights. It is insisted (Appellants' Brief, p. 42) that the amended charter effected a radical and fundamental change in the corporation. This contention will be discussed in the succeeding point. The only attempt to indicate a specific right of the appellants which has been in any manner affected is with reference to the provision in Chapter 722 of the laws of 1901 requiring the valuation of policies. The provision in question is that in the case of a corporation organized under or subject to Article VI of the Insurance Law, that is, an assessment or co-operative insurance company, its policies existing at the time of the amendment of the charter "shall be valued as one year term insurance at the ages attained." The complainants argue (p. 45) that this provision contemplates a change of their policies from life contracts to one-year renewable term contracts and increased assessments on the old policyholders for the creation of a legal reserve. *The bill contains no foundation whatever for this charge.* The Court is asked to assume from the language of the statute that such would be its effect. But the language

of the statute is not susceptible of the construction advanced by appellants, and that construction is contrary to the fact. The valuation of policies is purely a bookkeeping matter devised as a basis for the determination by the Insurance Department of the present worth of the company's liabilities upon outstanding policies. Section 84 of the Insurance Law of 1892 provides the method of valuing or determining the present worth of ordinary life policies, but this method would be inapplicable to assessment policies. Therefore it was necessary to devise some standard for determining the present liability on an outstanding assessment policy, and Chapter 722 of the laws of 1901 provided as such method a valuation as one-year term insurance. Of course no actual change in the term or treatment of existing policy contracts was contemplated. The purpose of the valuation of outstanding policies is to enable the superintendent of insurance to determine, by a comparison of the liabilities and assets of a company, whether the business of the company can be continued with safety to the public interests (see, for example, Insurance Law, Section 76).

The bill of complaint contains no charge that assessments of existing policyholders were increased to create a legal reserve, or that a portion of funds belonging to the old policyholders was taken from them in the form of a permanent reserve. Section 205 of the Insurance Law of 1892 required a certain reserve or emergency fund in the case of all co-operative or assessment insurance companies, and provided that if such fund had not already been accumulated, it should be accumulated by every existing corporation within six months after the enactment of said law. If, then, the Court were to make any assumption regarding the creation of a legal reserve, the proper assumption would be that the Insurance Law of 1892 had been complied with by the defendant corporation and that in

1902 it was in possession of funds and assets representing the necessary reserve on its existing assessment policies. Certainly the bill alleges nothing to the contrary. The appellants' brief (p. 64) refers to the correspondence between complainant Snodgrass and the defendant corporation in 1902 as indicating an attempted change by the Company in its treatment of the policy of said complainant and an increased assessment upon said policy. The letter of the complainant Snodgrass (Record, p. 99) amounts to nothing except an indefinite complaint as to the amount of his assessments, past and present, and an inquiry whether the change in the name of the Company signifies any change in his policy. The letter does not suggest that the assessment call, then just received, was a departure from the terms of the complainant's policy. The reply to this letter (Record, p. 101) purports merely to explain to the inquiring policyholder the nature of his policy in accordance with its original terms and to state the basis and terms upon which the former policy may be exchanged for a level premium life policy. It is impossible to find in this correspondence the slightest intimation of a change in the original terms and treatment of the policy of the complainant Snodgrass.

POINT IV.

Chapter 722 of the Laws of 1901 of the State of New York, under which the defendant amended its charter, does not violate the contract or due process provisions of the Federal Constitution. Appellants as policyholders of an assessment insurance company have no vested or contract right to insist that the business of the company shall always be conducted exclusively upon the assessment plan.

Since no specific contract or property rights which have been impaired are indicated by the bill, the only remaining question is whether any rights of the policyholders of an assessment or co-operative insurance company are impaired by an amendment of the charter of the company pursuant to which it is empowered to issue policies in the future in forms other than those pertaining to strictly assessment insurance. This amendment the appellants claim (Appellants' Brief, p. 42) effected a radical and fundamental change in the corporation which could not lawfully be made without their assent.

The charter of the company on its re-incorporation in 1883, as has been shown, provided that its business should be upon the co-operative or assessment plan. The amended charter of 1902 broadens the scope of its business and permits it to engage in all kinds of insurance on the lives and health of persons, eliminating the limitation to the assessment plan. It does not eliminate the authority of the company to do future business upon the assessment plan, as stated in appellants' brief (p. 41).

The record presents no question whatever except

whether this extension of the scope of the company's business is a violation of some rights of the policyholders; in other words, whether the holders of policies of insurance issued by an assessment company are entitled to insist that the company shall always do business exclusively upon that plan. It must be borne in mind that the case involves no forfeiture of the complainants' policies, and no attempted change of their policies from the assessment plan to a level premium plan. The former policies are recognized and treated according to the original plan, but under the amended charter the company claims the power to write its new policies upon modern and more approved lines.

The question presented has been decided adversely to the appellants' contention by this Court and is no longer an open question.

The question was definitely decided by this Court in *Wright v. Minnesota Mutual Life Insurance Company*, 193 U. S., 657, affirming a decision of the Circuit Court for the District of Minnesota reported below *sub nomine Iverson v. Minn. Mutual Life Ins. Co.*, in 137 Fed., 268.

The statute of Minnesota appears to have provided that the change in the company's plan of carrying on business from the assessment system to the regular premium basis should be made upon consent of a majority of the policyholders, and with the approval of the State Superintendent of Insurance. In that case, two dissatisfied holders of certificates issued on the assessment plan brought suit to wind up the affairs and distribute the assets of the company, claiming that the constitutional guaranty against the impairment of the obligation of a contract had been violated.

In the Minnesota case, as in this case, the statute provided, in substance, that no existing contract should be impaired, and in that case, as in this, the company appears to have recognized its pre-existing contracts as being in full force without any change.

In the Wright case, this Court, as stated in the syllabus, held: "That there was no vested right in a policyholder to have the original plan continued, that constituted a contract, nor did the state statute impair or operate to impair the obligation of any contract within the meaning of the impairment clause of the constitution."

The Court said in the course of its opinion (p. 662): "The statute in question expressly provides that it shall not operate to impair the obligation of any contract. In view of the argument that the Act must necessarily have that effect, we inquire whether there was a contract with the certificate-holders that the plan of insurance should never be changed. It is to be observed that the right of amendment of the articles of association, except in one particular, was reserved in the orginal articles of association. * * *

"It is not every change in the charter or articles of association of a corporation that will work such a departure from the purposes of its creation as to forfeit obligations incurred to it or prevent the carrying on of the modified business. A radical departure affecting substantial rights may release those who had come into the corporation on the basis of its original charter. * * *

"On the other hand, where the right of amendment is reserved in the statute or articles of association, it is because the right to make changes which the business may require is recognized, and the exercise of the privilege may be vested in the controlling body of the corporation. In such cases where there is an exercise of the power in good faith, which does not change the essential character of the business, but authorizes its extension upon a modified plan, both reason and authority support the corporation in the exercise of the right. * * *

"Nor does it appear that the changes were arbitrarily made without good and substantial reason. The testimony

in this record discloses that the experience of this assessment insurance company was not anomalous or unusual. It was a case of history repeating itself. Insurance payable from assessments upon members may begin with fine prospects, but the lapse of time, resulting in the maturing of certificates, and the abandonment of the plan for other insurance by the better class of risks, has not infrequently resulted in so increasing assessments and diminishing indemnity as to result in failure. The testimony that such was the history of this enterprise is ample. The changes of 1898 to a plan of issuing, in exchange for certificates and upon new business, a policy having some of the features of old line insurance, seems to have been fully justified by the state of the company's business. And the subsequent change to a policy with straight premiums and fixed indemnity was approved by the majority of the members upon proceedings had under the Minnesota statute, and has resulted in a successful business and a considerable change of the members to the new and more stable plan. It does not appear that any certificate has been unpaid, nor is any failure shown to levy assessments required under the original articles. * * *

"The business is still that of mutual insurance, notwithstanding changed methods of operations. The new plan has been legally adopted and approved by the insurance commisisoner of the State. The argument for appellants is that, having begun as an assessment company, the plan can never be changed without the consent of all interested. But we have seen that the right of amendment was given in the original articles of association. There was no contract that the plan of insurance should never be changed. On the contrary, it was recognized that amendments might be necessary. There was no vested right to a continuation of a plan of insurance which experience might demonstrate would result disastrously to the company and its members.

We are cited to the statutes of many States authorizing similar changes and transfer of membership, but to no case holding legislative authorization of a change of this character to work the impairment by the State of the obligation of a contract.

"The Courts are slow to interfere with the management of societies such as this mutual insurance company. While the rights of members will be protected against arbitrary action, such organizations will ordinarily be left to their own methods of action and management."

Appellants seek to distinguish *Wright v. Minnesota Life Insurance Company* upon several grounds (Appellants' Brief, pp. 12, 13, 49 to 55). They say, *first*, that the defendant here was insolvent at the time of the amendment of its charter, while in the *Wright* case the company was solvent. It is impossible to imagine what difference the insolvency of the company would make as to the constitutionality of the statute, even if insolvency were shown in the bill, which it is not. They say, *secondly*, that in the *Wright* case the amendment of the charter was approved by a majority of the members of the company, while in the present case the members had no vote on the question. It is true that in the *Wright* case the statute required consent of a majority of the members, but that fact makes not the slighest difference, for if there had existed in the members a vested contract right to insist that the future business should always be conducted exclusively upon the original plan, dissenting members could no more be deprived of that right by a majority of the members, as in that case, than by a vote of the Board of Directors, as in this case. They say, *thirdly*, that in the *Wright* case the power of amendment was exercised in good faith, while in the case at bar the amendment was devised and executed fraudulently and in bad faith. It is true that the bill of complaint alleges that the amendment of the charter was

secretly and fraudulently conceived and executed by the Board of Directors for the purpose of depriving complainants and other policyholders of their membership rights (Record, p. 29). This allegation, however, certainly creates no ground of distinction between the present case and the *Wright* case in the absence of any showing that any specific rights of the complainants were or could be affected by the amendment. The allegation of a fraudulent purpose unaccompanied by any facts constituting fraud amounts to nothing more than a conclusion of the pleader. The *fourth* and principal ground presented by the appellants to distinguish the present case from the *Wright* case appears to be the argument that in the *Wright* case the charter contained an express reservation of the power of amendment, while the certificate of incorporation of the defendant contained no such express reservation. Although the certificate of incorporation of the Mutual Reserve Fund Life Association contained no express reservation of the right of amendment, such power was just as fully reserved by virtue of the constitution of the State of New York. The reservation contained in the constitution of the State at the time of the incorporation of the defendant, in 1881, and its reorganization in 1883 was, of course, as much a part of the charter of the company as if the reservation had been carried into the certificate of incorporation in express terms.

In 1846 the People of the State of New York embodied a provision reserving the right to alter or repeal corporate charters in the Constitution of the State, which was continued without change in the Constitution of 1894 and remains in full force and effect at the present time. It is as follows:

"Article VIII. Sec. 1. Corporations may be formed under general laws; but shall not be created by special act, except for municipal purposes, and in cases where, in the

judgment of the Legislature, the objects of the corporation cannot be attained under general laws. *All general laws and special acts passed pursuant to this section may be altered from time to time or repealed.*"

The laws governing this corporation were therefore subject to amendment at the will of the Legislature, of course within the limits of the Federal and State Constitutions.

Looker v. Maynard, 179 U. S., 46, arose, as follows:

The Michigan Mutual Life Insurance Company was organized in 1870, under the General Laws of Michigan, and, under its charter, its directors were to be elected by stockholders and by policyholders of a certain amount of insurance, each stockholder being granted one vote for each share of capital stock standing in his name, a majority vote being necessary for an election. Subsequently, in 1885, the Legislature of Michigan passed an Act permitting each stockholder to cumulate his vote upon any one or more candidates for directors. The Constitution of Michigan, adopted in 1850, Article 15, Section 1, is as follows: "Corporations may be formed under general laws, but shall not be created by special act except for municipal purposes. All laws passed pursuant to this section may be amended, altered or repealed."

The contention of the plaintiff-in-error was that the articles of association as to the method of electing directors constituted a contract between the stockholders, that the change by statute in the method of electing directors destroyed the vested contract rights of the stockholders, as to the management of their property, that the reserved power to amend charters extended only to such matters as concerned the public and was not designed to affect the contracts of the incorporators among themselves as to the control of their interests in the property. Nevertheless this Court held that the amendment in question was within the reserved power of amendment and alteration.

The Court said (p. 52): "The effect of such a provision,

whether contained in an original act of incorporation, or in a constitution or general law subject to which a charter is accepted, is, at the least, to reserve to the legislature the power to make any alteration or amendment of a charter subject to it, which will not defeat or substantially impair the object of the grant, or any right vested under the grant, and which the legislature may deem necessary to carry into effect the purpose of the grant, or to protect the rights of the public or of the corporation, its stockholders or creditors, or to promote the due administration of its affairs.

See also: *Miller v. State of New York*, 15 Wallace, 478, which sustained laws authorizing a municipality to choose a majority of the directors of an existing railroad corporation; *C. H. Venner Co. v. U. S. Steel Corporation*, 116 Fed., 1012, which sustained the compulsory exchange of preferred stock for second lien bonds under a State law passed after the incorporation of the company; and *McKee v. Chautauqua Assembly*, 130 Fed., 536, sustaining a law of New York regulating the powers of the corporation, Chautauqua Assembly, and consolidating with it two other institutions without the consent of members of the corporation.

The views of the Court of Appeals of the State of New York upon the present question are expressed in *Grobe v. Erie County Fire Insurance Co.*, 169 N. Y., 613, affirming the decision of the Appellate Division on its opinion reported in 39 Appellate Division, 183.

Mr. Justice FOLLETT, writing the opinion, stated the facts and the law as follows: "This action was begun July 30, 1896, to recover a judgment restraining the defendant from converting the Erie County Mutual Insurance Company into a stock corporation, pursuant to Section 125 of Chapter 690 of the laws of 1892 (the Insurance Law, 2 R. S.—Banks' 9th Ed.—1184) as amended by Chapter 850 of the laws of 1896 (5 R. S.—Banks' 9th Ed.—3827).

"The Erie County Mutual Insurance Company was incorporated March 14, 1874, pursuant to Chapter 466 of the laws of 1853 and the acts amendatory thereof and supplementary thereto. * * *

"By Section 18 of Chapter 466 of the laws of 1853, the general act for the incorporation of insurance companies, a method was provided by which mutual fire insurance companies 'heretofore incorporated under the laws of this State or organized under this act,' could be changed to stock insurance corporations, which provision was amended by the 4th section of Chapter 367 of the laws of 1862 (3 R. S.—Banks' 8th Ed.—1646), and when this company was incorporated read as follows: 'Any mutual insurance company heretofore incorporated or organized under any of the laws of this State, having surplus assets aside from premium and stock notes, sufficient to reinsure all its outstanding risks, after having given notice once a week for six weeks, of their intention, and of the meeting hereinafter provided for, in the State paper, and in a newspaper published in the county where such company is located, may, with the consent of two-thirds of the corporators or members present at any regular annual meeting, or at any special meeting duly called for the purpose, or with the consent in writing of two-thirds of the corporators or members of such company, and the consent also of three-fourths of the trustees or directors (unless otherwise provided in the charter), become a joint stock company by conforming its charter to and otherwise proceeding in accordance with this act.' * * *

"This provision remained unchanged until 1892, when it was repealed by Chapter 690 of the Laws of 1892, and Section 125 of that chapter was substituted in its place (2 R. S.—Bank's 9th Ed.—1184), which did not materially change the original provision. By Chapter 850 of the Laws of 1896, Section 125 was amended by providing that the change from a mutual to a stock corporation may

be made in case 'the superintendent of insurance give his consent thereto, and the president and directors thereof by three-fourths vote, decide to so do, so amend the charter thereof as to convert the same into a stock corporation.' By this amendment the requirement of the consent of two-thirds of the members of such corporation was abrogated. It is not alleged in the complaint that the statutory requirements to change the corporation from a mutual to a stock corporation were not strictly complied with, but the theory of the complaint is that the change was effected pursuant to the amended section, which it is urged is unconstitutional, and that the change is in violation of the rights of the plaintiff, a member of the Erie County Mutual Insurance Company.

"Since 1846 the Constitution of this State has provided: 'Corporations may be formed under general laws; but shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the Legislature, the objects of the corporation cannot be attained under general laws. All general laws and special acts passed pursuant to this section may be altered from time to time or repealed' (Art. 8, Sec. 1).

"Pursuant to this provision the statutes under which this corporation was organized and by which it must be controlled were passed, and every person who became a member of the corporation did so with full knowledge that it might be at any time changed from a mutual to a stock corporation, upon certain terms and conditions, and that under this provision of the Constitution those terms might at any time be changed by the Legislature. A member of this corporation has no definite property interest which can be ascertained and recovered except those interests created by contract. The assets belong to the corporation, and no member has an interest in any aliquot part thereof; and the unascertained interest of a mere policyholder is quite insufficient to sustain an equitable action brought

to prevent the corporation from doing what the statute authorizes it to do. To permit corporations to be managed by suits in equity, instituted in the interests of persons holding such indefinite rights, would produce intolerable confusion and end substantially in the destruction of such enterprises. The case at bar is quite different from an action brought by a member of a corporation who seeks to enforce by an action some definite right secured to him by a contract with the corporation.

"I am unable to see on what theory Chapter 850 of the laws of 1896 or any of the preceding similar statutes can be successfully challenged as unconstitutional. These statutes do not deprive any member of a mutual insurance company of any property right, for, as before stated, the assets of the corporation belong to it and not to the members, and are to be administered pursuant to the statutes for the mutual benefit of all existing and new members. These statutes confer equal rights on all members to become stockholders in the new joint stock corporation and share in the benefits."

It is impossible to distinguish *Grobe v. Erie County Fire Insurance Company* from the present case, except that it involved a charter amendment of a more radical character than the amendment here involved. That case involved a change from a mutual to a stock company, and the statute permitted the change to be made by a three-fourths vote of the directors upon consent of the Superintendent of Insurance, *and abrogated the provision of the law under which the company was organized, requiring the consent of members.* The question of constitutionality was squarely raised, argued and decided, and the amending Act of 1896 was held constitutional in the light of the provision of the State Constitution that all general laws passed pursuant to the corporation section of the Constitution may be altered from time to time or repealed." The amendment was made under Section 125 of the Insurance Law, which

does not differ in principle from the provisions of Chapter 722, laws of 1901, under which the amendment of the Mutual Reserve Life Insurance Company was effected.

See also:

Barnes v. Arnold, 169 N. Y., 611, 45 Appellate Division, 314.

Hinckley v. Sulzberger Co., 107 Appellate Division, 470.

In the present instance, by amending the charter and accepting the provisions of the Insurance Law, the character of this corporation as a mutual insurance company was still retained. The amendment involved merely authority in the future to issue new forms of policies. Existing contracts of insurance between the company and its members were in no way changed. Their voice in the management of the corporate affairs remained the same. The members were to continue to choose the directors as theretofore. The existing by-laws, which form part of the contract of the corporation with its members, are expressly continued. The only change of substance is that, instead of being limited to transacting business upon the co-operative or assessment plan, the company by its amended charter became empowered to transact the business of life insurance generally.

The appellants' brief lays much stress on the decision in *Lord v. The Equitable Life Assurance Society* (109 App. Div., 252). We are unable to see wherein the appellants can derive comfort in the present case from that decision. The *Lord* case was a suit to enjoin the directors of the Equitable Life Assurance Society from amending the charter of the corporation under Section 52 of the Insurance Law, as amended by Chapter 722 of the laws of 1901. The contemplated amendment of the charter was intended to permit the election of a majority of the directors of the company by the policyholders. The company was a stock

corporation, and the effect of the amendment would have been to deprive the stockholders not only of their management of the affairs of the company, but also of their control of its vast surplus. The point decided by the Appellate Division for the Second Department was that Section 52 of the Insurance Law could not be construed as authorizing the radical amendment of the charter then in question. The proposed amendment of the charter of the Equitable Life Assurance Society clearly affected most vitally the contract and property rights of the stockholders. The decision in that case does not in the least intimate that Chapter 722 of the laws of 1901 does not authorize an amendment of the charter permitting the issuance of new forms of policies without disturbing or impairing existing and outstanding policies and contracts. We do not understand that the appellants claim, or ever have claimed, that the terms of Chapter 722 of the laws of 1901 were not broad enough to authorize the amendment adopted in the present case. In any event, no question of the interpretation of the statute in this respect has been certified to this Court by the Circuit Court of Appeals. The questions before this Court are, assuming that the statute authorized the amendment adopted, whether the statute was unconstitutional as impairing the obligation of contracts or depriving the complainants of property without due process of law. In the *Lord* case the Court distinctly held that if Chapter 722 of the laws of 1901 authorized the amendment proposed in that case, although the effect would have been to deprive the stockholders of their control of the company, the amendment would have been within the reserved power of the State Legislature. The Court said (p. 265): "Whether the scheme which is proposed and which is now before us is a good one or not, it is not here for determination; we are dealing now with the question of power, and we have no doubt that the Legislature might if it saw fit so amend the law of this State as to permit of

a choice of a majority of the directors of the defendant company."

The expression of opinion just quoted from the *Lord* case is in entire accord with the decision of the Appellate Division in *Grobe v. Erie County Fire Insurance Co.*, 39 App. Div., 183. There can be no doubt as to the views of the Court of Appeals upon that question, since that Court affirmed the decision in the *Grobe* case upon the opinion of the Appellate Division, thereby adopting the opinion of the lower Court as its own opinion.

Here the question is, solely, whether the company must forever be confined in the issuance of its policies to a form of policy permitted by its original charter, or whether the State may, within its reserved power, authorize an amendment which will permit the issuance of new forms of policies while preserving intact the contracts and obligations of all existing policies.

It would appear that the decisions of this Court and of the New York Courts have definitely settled the question presented. In view of these decisions it must be held that Chapter 722, laws of 1901, and the amendment adopted by the defendant thereunder, were within the power of amendment reserved by the State Constitution, and violated no rights of the complainants.

CONCLUSION.

The questions certified should be answered in the negative.

Respectfully submitted,

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APPENDIX.

Provisions of New York State Statutes to which reference is made in the appellee's brief.

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LAWS OF 1860, CHAPTER 328.

AN ACT to amend an act entitled "An act to provide for the incorporation of life and health insurance companies, and in relation to agencies of such companies," passed June twenty-four, eighteen hundred and fifty-three, and the amendment thereto, passed July eighteen, eighteen hundred and fifty-three.

Sections 1 and 2 made amendments in Chapter 463, laws of 1853, relating only to investments of capital and surplus of insurance companies.

Section 3. Any company organized under the acts to which this is an amendment, having first obtained the consent of the superintendent of the insurance department thereto in writing, may, by a vote of a majority of their directors, accept the provisions of this act, or any of them, and amend their charter to conform with the same.

LAWS OF 1875, CHAPTER 267.

AN ACT for the incorporation of societies or clubs for certain lawful purposes.

Section 1. Any five or more persons of full age, citizens of the United States, a majority of whom are also citizens of this State, who desire to form themselves into a society or club for social, mutual, benefit, benevolent, temperance, politic, economic, patriotic, gymnastic, athletic, military drill, musical, dramatic, literary, artistic, yachting, hunting, fishing, bathing, or lawful sporting purposes, may sign and acknowledge, before any officer authorized to take the acknowledgment of deeds in this State, and to file in the office of the Secretary of State, and also in the office of the clerk of the county in which the office of such society or club shall be situated, a certificate, in

writing, in which shall be stated the name or title by which such society shall be known in law, the particular business and object of such society, the number of trustees, directors or managers to manage the same, and the names of the trustees, directors or managers for the first year of its existence, but such certificate shall not be filed unless by the written consent and approbation of one of the Justices of the Supreme Court of the district in which the principal office of such society or club shall be located, to be indorsed on such certificate; but nothing in this act contained shall authorize the incorporation of any society or club for any purpose repugnant to any statute of this State or prohibited thereby.

Section 2. Upon filing a certificate as aforesaid the persons who shall have signed and acknowledged such certificate, and their associates and successors, shall thereupon, by virtue of this act, be a body politic and corporate by the name stated in such certificate, and by that name they and their successors shall and may have succession, and shall be persons in law capable of suing and being sued; and they and their successors may have and use a common seal, and may alter and change the same at pleasure; and they and their successors by their corporate name shall, in law, be capable of taking, receiving, purchasing, leasing and holding real estate for the purposes of their incorporation, and for no other purpose, to an amount not exceeding the sum of Five hundred thousand dollars in value, exclusive of the buildings and improvements thereon, and personal estate for like purposes to an amount not exceeding the sum of One hundred and fifty thousand dollars in value, exclusive of the buildings and improvements on its said real estate and the furnishing of its club house, but the clear annual income of such real and personal estate shall not exceed the sum of Fifty thousand dollars; to make and adopt a constitution, by-laws, rules

and regulations for the government of said corporation, and for the admission, voluntary withdrawal, censure, suspension and expulsion of its members, for the establishing and collection of the fees and dues of its members, the number and election of its officers, and to define their duties and compensation, and for the safe-keeping of its property, and from time to time to alter, modify or change such constitution, by-laws, rule and regulations; provided, however, that no constitution, by-laws, rules or regulations shall be made or adopted by said corporation which shall be inconsistent with the Constitution and laws of the United States or this State. The by-laws of any society or club for yachting purposes may provide that the qualified voters of such society or club be limited to the owners of yachts in such manner that the owners of each yacht shall together cast but one vote in the meetings of such society or club, and in the election of its officers, trustees, directors or managers.

Section 3. The membership of any person in said society or corporation shall be determined by his death or by his voluntary withdrawal therefrom or by expulsion therefrom, and the manner of such withdrawal or expulsion of members shall be determined and provided by the by-laws of said corporation, and upon such death, withdrawal or expulsion all and every right, title and interest of the person whose membership is so determined, in or to or by reason of the said corporation, by reason of his former membership therein or in, or to its property or effects, shall at once cease and be forever at an end.

Section 4 relates only to the election of directors and trustees.

Section 5 provides that the corporation shall not be dissolved because of a failure to elect directors or trustees on the day designated by the by-laws.

Section 6 prohibits the use of the name of any existing corporation.

Section 7 relates to the power of the corporation to take property by devise or bequest.

Section 8 relates to the personal liability of directors and trustees for debts of the corporation.

Section 9 relates to visitation of the corporation and the filing of an annual inventory.

Section 10. Each corporation formed under this act shall possess the general powers conferred by and be subject to the provisions and restrictions of the third title of the eighteenth chapter of the first part of the Revised Statutes, except as the same are modified by this act.

Section 11. The Legislature may, at any time, amend, annul or repeal any incorporation formed or created under this act.

LAWS OF 1883, CHAPTER 175.

AN ACT to provide for the incorporation and regulation of co-operative or assessment life and casualty insurance associations and societies.

Section 1. Any number of persons not less than nine, residents of the State of New York, hereafter desiring to form an organization fraternal or non-fraternal, for the purpose of transacting the business of life or casualty insurance, or both life and casualty insurance, upon the co-operative or assessment plan, may associate themselves together and effect such organization as hereinafter prescribed, and not otherwise.

Section 2. Such persons shall file in the office of the superintendent of the insurance department a declaration

signed by each of the corporators, and duly acknowledged before an officer authorized under the laws of this state to take the acknowledgment of deeds, and shall therein express their intention to form an organization for the transaction of life or casualty insurance, or both, upon the cooperative or assessment plan, which said declaration shall also contain the proposed name of the association, corporation or society (which shall not be the same as, nor too closely resemble the name of any other corporation organized under the laws of this State); the place where the principal office for the transaction of its business shall be located, which shall be at some place within this state; the mode and manner in which the corporate powers granted by this act are to be exercised; the mode and manner of electing the trustees, directors, or representatives, or other persons, by whatsoever name or title designated, who are to have and exercise the general control and management of its affairs, and all its funds, which election shall be in such manner as shall be prescribed by the by-laws of such corporation, association or society, or in case of fraternal societies by representatives chosen by subordinate lodges, councils or bodies; who shall be members of such society, and a majority of them citizens of this State.

Section 3. Upon the filing in the office of said superintendent of the declaration required by the next preceding section, together with the sworn statement of two of said corporators, that at least fifty persons eligible under the proposed laws of such corporation, association or society to membership therein have made application in writing for such membership, the same shall be referred to and examined by the attorney-general of the State, and if by him found conformable to the requirements of this act, and not inconsistent with the constitution and laws of the

United States and of this State, he shall certify accordingly, and return the same with his certificate of such conformity to said superintendent, and thereupon said superintendent shall cause the said declaration, with the certificate of the attorney-general, to be recorded in a book to be kept for that purpose, and shall deliver to such corporation, association or society a certified copy of the papers so filed and recorded in his office, and of the certificate of the said attorney-general, together with the license of said superintendent to such corporation, association or society to engage in the business proposed in said declaration, and upon such certified copy and license being filed in the office of the clerk of the county where the association is to be located, the said corporators, and those that may thereafter become associated with them or their successors, shall be constituted a body politic and corporate, and lawfully entitled to commence its business, and any copy of any paper referred to in this act certified by said superintendent may be used in evidence with the same effect as the originals.

Section 4. The corporators, trustees, directors, members or representatives, as the case may be, of any association, corporation or society organized under this act, shall have power to make such by-laws not inconsistent with the constitution or laws of this State, or of the United States, as may be deemed necessary for the government of its officers and the conduct of its affairs, and the same, when necessary, to alter and amend; and they and their successors may have a common seal and may change and alter the same at their pleasure.

Section 5. Any corporation, association or society which issues any certificates, policy or other evidence of interest to, or makes any promise or agreement with, its members whereby upon the decease of a member any money or

other benefit, charity, relief or aid is to be paid, provided or rendered by such corporation, association or society, to the legal representatives of such member, or to the beneficiary designated by such member, which money, benefit, charity, relief or aid are derived from voluntary donations or from admission fees, dues and assessments or any of them collected or to be collected from the members thereof, or members of a class therein, and interest and accretions thereon or rebates from amounts payable to beneficiaries or heirs; and wherein the paying, providing or rendering of such money or other benefit, charity, relief or aid, is conditioned upon the same being realized in the manner aforesaid; and wherein the money or other benefit, charity, relief or aid so realized is applied to the uses and purposes of such corporation, association or society, and the expenses of the management and prosecution of its business, shall be deemed to be engaged in the business of life insurance upon the co-operative or assessment plan, and shall be subject only to the provisions of this act.

Section 6 defines the business of casualty insurance.

Sections 7 and 8 relate to annual reports.

Section 9 relates to filing designation of principal office and name of agent on whom process may be served.

Section 10 relates to the admission of foreign insurance companies.

Section 11 relates to revocation of charters.

Section 12. Any existing corporation, association or society transacting business of life or casualty insurance, or both, upon the co-operative or assessment plan, and incorporated under the laws of this State, may reincorporate under the provisions of this act by filing with said superintendent the declaration required by the second

section of this act, signed and duly acknowledged by a majority of its board of directors, trustees or managers, and the certificate of conformity from the attorney-general of the State, whereupon the said superintendent shall record and deliver to such corporation, association or society a certified copy of such declaration, and such certificate, together with his license to transact business, and upon the same being filed in the office of the clerk of the county wherein the principal office for the transaction of its business is located, the same shall thereupon be deemed to be incorporated under the provisions of this act. Provided, always, that nothing in this act contained shall be construed as requiring or making it obligatory upon any such existing corporation, association or society to reincorporate under the provisions of this act; and any such existing corporation, association or society may continue to exercise all rights, powers and privileges not inconsistent with this act, pursuant to its articles of association or incorporation, the same as if reincorporated under this act.

Sections 13 and 14 provide for visitation by the Superintendent of Insurance and proceedings by the Attorney-General to restrain the continuance of business.

Section 15 relates to fees to be paid to the Insurance Department.

Section 16. All corporations, companies, societies, organizations or associations of this or any other State or country transacting the business of life or casualty insurance on the co-operative or assessment plan, as referred to in the fifth and sixth sections of this act, are hereby made subject to all the provisions of this act, and shall hold, within the county in which the principal office is located in this State, a stated annual meeting of their members or

policyholders, or representatives of local boards or subordinate bodies in such manner and subject to such regulations, restrictions and provisions as the constitution or by-laws of the same may provide. In cases of secret or fraternal societies having a grand or supreme body, such meeting of the grand or supreme body may be at such time and place as shall be designated by such grand or supreme body. At such meeting a full and specific report of all receipts and expenditures of the preceding year or since the last meeting, as the case may be, shall be submitted. Notice of each such meeting shall be given in such manner as the by-laws may direct, but not less than five days before such meeting, to each director, member and policyholder, except that in lieu thereof such notice may be given to a subordinate body of a society having a grand or supreme body, or to a local board subordinate to the association. Every such association, corporation or society other than secret fraternal societies now authorized as aforesaid to do business in this State must hereafter, before the adoption of any by-law or amendment thereto, cause the same to be mailed to the members and directors of such association, society or corporation, together with a notice of the time and place when the same will be considered, which notice shall be the same as hereinbefore required for a stated meeting. The books and papers of such association shall at all reasonable times be open for examination by members or their representatives. All associations, societies, companies, corporations or organizations now transacting, or hereafter desiring to transact, the business of life or casualty insurance in this State, upon any other plan than that defined in and by sections five and six of this act, shall comply with all the provisions of the general life and health insurance laws.

Section 17. Each notice of assessment made by any corporation, association or society transacting the business of

life or casualty insurance, or both, upon the co-operative or assessment plan, made upon its members or any of them, shall truly state the cause and purpose of such assessment.

Section 18. Membership in any corporation, association or society transacting the business of life or casualty insurance, or both, upon the co-operative or assessment plan, shall give to any member thereof the right, at any time, with the consent of such corporation, association or society, to make a change in his payee or payees, beneficiary or beneficiaries without requiring the consent of such payee or beneficiaries.

Section 19. The money or other benefit, charity, relief or aid to be paid, provided or rendered by any corporation, association or society authorized to do business under this act shall be exempt from execution, and shall not be liable to be seized, taken or appropriated by any legal or equitable process, to pay any debt or liability of a member.

Section 20 prescribes penalties for certain violations of the act.

Section 21 exempts certain societies from the requirements as to reports.

Section 22 penalizes false representations by solicitors, agents or examining physicians.

Section 23 relates to quorums at elections of officers and directors.

LAWS OF 1892, CHAPTER 690.

AN ACT in relation to insurance corporations, constituting chapter thirty-eight of the general laws.

ARTICLE I.

General Provisions.

Section 1. Short title.—This chapter shall be known as the insurance law, and shall be applicable to all corporations authorized by law to make insurances.

* * * * * *

Section 52. Reorganization of existing corporations and amendment of certificates.—Any domestic insurance corporation existing or doing business at the time this chapter takes effect (and not incorporated under any law repealed by this chapter), may, by a vote of a majority of its directors, accept the provisions of this chapter and amend its charter to conform with the same, upon obtaining the consent of the superintendent of insurance thereto in writing; and thereafter it shall be deemed to have been incorporated under this chapter. Every domestic insurance corporation may amend its charter or certificate of incorporation by inserting therein any statement or matter which might have been originally inserted therein; and the same proceedings shall be taken upon the presentation of such amended charter or certificate to the superintendent of insurance as are required by this chapter to be taken with respect to any original charter or certificate, and if approved by the superintendent of insurance, and his certificate of authority to do business thereunder is granted, the corporation shall thereafter be deemed to possess the same powers and be subject to the same liabilities as if such amended charter or certificate had been its original charter or certificate of incorporation, but without prejudice to any pending action or proceeding or any rights previously accrued.

Note: Matter indicated by parentheses above omitted in amendment made by Chapter 725, Laws of 1893.

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ARTICLE II.

Life, Health and Casualty Insurance Corporations.

Section 70. Incorporation.—Thirteen or more persons may become a corporation for the purpose of making any of the following kinds of insurance:

1. Upon the lives or the health of persons and every insurance appertaining thereto, and to grant, purchase or dispose of annuities.

2. Against injury, disablement or death resulting from traveling or general accidents, and every insurance appertaining thereto.

3. Insuring any one against loss or damage resulting from accident to or injury suffered by an employe or other person, and for which the person insured is liable.

4. Guaranteeing the fidelity of persons holding places of public or private trust. Guaranteeing the performance of contracts other than insurance policies and executing or guaranteeing bonds and undertakings required or permitted in all actions or proceedings or by law allowed.

5. Against loss by burglary or theft, or both.

6. Upon glass against breakage.

7. Upon steam boilers and upon pipes, engines and machinery connected therewith or operated thereby, against explosion and accident and against loss or damage to life or property resulting therefrom, and to make inspection of and to issue certificates of inspection upon such boilers, pipes, engines and machinery.

8. Against any other casualty specified in the charter which may lawfully be the subject of insurance.

By making and filing in the office of the superintendent of insurance a certificate signed by each of them, stating their intention to form a corporation for the purpose or purposes named in some one of the foregoing subdivisions specifying the subdivisions; and setting forth a copy of the charter which they propose to adopt, which shall state the name of the proposed corporation, the place where it is to be located, the kind of insurance to be undertaken, and under which of the foregoing subdivisions it is authorized, the mode and manner in which its corporate powers are to be exercised, the manner of electing its directors and officers, a majority of whom shall be citizens and residents of this State, the time of such election, the manner of filling vacancies, the amount of its capital, and such other particulars as may be necessary to explain and make manifest the objects and purposes of the corporation.

Such certificate shall be proved or acknowledged and recorded in a book to be kept for that purpose, and a certified copy thereof delivered to the persons executing the same.

No such corporation shall be formed under this article for the purpose of undertaking any other kind of insurance than that specified in some one of the foregoing subdivisions, or more kinds of insurance than are specified in a single subdivision, except that a corporation may be formed for all the purposes combined, or any two or more of them, specified in the first, second and third subdivisions or for all the purposes combined, or any two or more of them specified in the second, third, fourth, fifth, sixth, seventh and eighth subdivisions.

No one policy issued by any one corporation shall embrace more kinds of insurance than are specified in one of such subdivisions, but a policy may embrace risks specified in subdivisions two and three.

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Section 76. When depositing corporation to be deemed insolvent.—If at any time the affairs of any such depositing corporation shall, in the opinion of the superintendent of insurance, appear to be in such a condition as to render the issuing of additional policies and annuity bonds by the corporation injurious to the public interests, such corporation shall be deemed insolvent and the superintendent shall report the fact to the attorney-general, who shall bring such action or institute such proceeding as may be authorized by law to be taken against an insolvent insurance corporation. If in any such action or proceeding it shall appear to the satisfaction of the court that the assets and funds of the corporation are not sufficient to justify its further continuance of the business of insuring lives, granting annuities and incurring new obligations as authorized by its charter, it shall enjoin and restrain the corporation from the further transaction of its business and appoint a receiver of its assets and credits, who, upon filing his bond to the people of the state in an amount and with sureties approved by the court, conditioned for the faithful performance of his duties, shall take possession of all such assets and credits, including the securities deposited in the insurance department.

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Section 82. When receiver shall not be appointed, or new policies issued.—No receiver for any life insurance corporation shall be appointed if such corporation has actual funds invested according to law, of a net cash value equal to its outstanding liabilities, and a sufficient reserve on policies and claims not matured, calculated according to the American experience table of mortality, with interest at four and one-half per cent. per annum, and in computing such liabilities, capital stock shall not be considered as a liability of the corporation. But no such corporation

shall issue new policies if its premium reserve fund with interest at four per cent., calculated according to the actuaries or combined experience table of mortality is shown to be impaired until the impairment is made good, and the certificate of the superintendent of insurance is issued to that effect.

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Section 84. Valuation of Policies.—The superintendent of insurance shall annually make valuations of all the outstanding policies, additions thereto, unpaid dividends and all other obligations of every American life insurance corporation doing business in this state, and for the purpose of such valuations and examinations made by him or his authority and of the valuation of registered life and other policies, such valuation shall be on the net premium basis according to the actuaries or combined experience table of mortality, with interest at four per cent. per annum.

He may vary the standards of interest and mortality in the case of corporations from foreign countries and in particular cases of invalid lives and other extra hazards, and value policies in groups, use approximate averages for fractions of a year and otherwise, and calculate values by net premiums or otherwise, and accept the valuation of the department of insurance of any other state in place of the valuation herein required, if the insurance officer of such state accepts as sufficient and valid for all purposes the certificate of valuation of the superintendent of insurance of this state.

Section 85. When actual premium is less than net premium.—When the actual premium charged for an insurance by any life insurance corporation doing business in this state is less than the net premium for such insurance computed according to the table of mortality and rate of

interest prescribed in this article, such corporation shall be charged as a separate liability with the value of an annuity, the amount of which shall equal the difference between such premiums and the term of which in years shall equal the number of future annual payments due on such insurance at the date of the valuation.

Section 86. What shall be allowed as assets.—In estimating the condition of any life insurance corporation, under the provisions of this charter, or in any examination made by him, or by an examiner appointed by him, the superintendent shall allow as assets only such investments as are authorized by the laws of this state, at the date of examination, and shall charge as liabilities, exclusive of the capital stock, all outstanding indebtedness of the corporation, and the premium reserve on policies, and additions thereto in force computed according to the table of mortality and rate of interest prescribed in this article. Any assets or securities lawfuly held or acquired for the satisfaction, reduction or guarantee of any indebtedness to the corporation shall be allowed as assets at their just value in the judgment of the superintendent, but the total assets invested and otherwise of every domestic life insurance corporation shall be held to be accumulations for the exclusive benefit of policyholders, and no payment to stockholders shall be made therefrom until all obligations to policyholders and creditors have been fully provided for, including the reserve required by this chapter to be determined by the superintendent of insurance.

In estimating the condition of any casualty insurance corporation, under the provisions of this chapter, the superintendent shall allow as assets only such investments as are authorized by the existing laws of this state, at the date of its investigation; and shall charge as liabilities, in addition to the capital stock, all outstanding indebtedness of the corporation, and the premium reserve on poli-

cies in force, equal to the unearned portions of the gross premiums charged for covering the risks computed on each respective risk from the date of the issuance of the policy.

ARTICLE VI.

Life or Casualty Insurance Corporations Upon the Co-operative or Assessment Plan.

Section 200. Incorporation.—Nine or more persons may become a corporation for the purpose of transacting the business of life or casualty insurance, or both, upon the co-operative or assessment plan, fraternal or non-fraternal, by filing in the office of the superintendent of insurance a declaration signed by each of them and duly acknowledged, setting forth their intention to form a corporation for the transaction of life or casualty insurance, or both, upon the co-operative or assessment plan, the name of the proposed corporation, the place where its principal office shall be located within the state, the mode in which its corporate powers are to be exercised and of electing directors or other persons, by whatsoever name or title designated, who are to have and exercise the general control and management of its affairs and of its funds, which election shall be in such manner as shall be prescribed by its by-laws, or in case of fraternal societies, by representatives chosen by subordinate lodges, councils or bodies, who shall be members of such societies and a majority of them citizens of this state. Such declaration shall have indorsed thereon or annexed thereto and as a part thereof, the sworn statement of three of such persons that at least two hundred persons eligible under the proposed laws of the corporation to membership therein have in good faith made application in writing for membership.

If all the requirements of this chapter have been com-

plied with, the superintendent shall file such declaration and record it with the certificate of the attorney-general, in a book to be kept for that purpose, and deliver to the corporation a certified copy of the papers so filed and recorded, with his license in writing to the corporation to engage in the business proposed in the declaration, which certified copy and license shall be filed in the office of the clerk of the county where the office of the corporation is to be located. Such corporation shall not commence the business of insurance until at least two hundred persons have subscribed in writing to be insured therein in the aggregate amount of at least four hundred thousand dollars, and have each paid in two per cent. on the amount of the insurance severally subscribed for in cash, and the same is deposited in bank to the credit of the mortuary fund to be held in trust for the benefit of the beneficiaries, and the superintendent of insurance shall have further certified that it has complied with the provisions of this chapter, and is authorized to transact business.

Section 201. What corporations to be subject to this article.—Any corporation, association or society which issues any certificate, policy or other evidence of interest to, or makes any promise or agreement with its members, whereby, upon the decease of a member any money or other benefit, charity, relief or aid is to be paid, provided or rendered by such corporation, association or society to his legal representatives, or to the beneficiary designated by him, which money, benefit, charity, relief or aid is derived from voluntary donations or from admission fees, dues or assessments, or any of them, collected or to be collected from the members thereof, or members of a class therein, or interest, or accretions thereon, or accumulations thereof, or rebates from amounts payable to beneficiaries or heirs; and wherein the money or other benefit, charity, relief or aid, so realized, is applied to or accumulated for the uses

and purposes herein specified, or of such corporation, association or society, and the expenses of the management and prosecution of its business, shall be deemed to be engaged in the business of life insurance upon the co-operative or assessment plan, and shall be subject to the provisions of this article.

Any such corporation, association or society, which issues any certificate, policy or other evidence of interest to, or makes any promise or agreement with, its members, whereby, upon the sickness or other physical disability of a member, and not by reason of having attained a certain age, any money or other benefit, charity, relief or aid is to be paid, provided or rendered by such corporation, association or society to such member or beneficiary designated by him, which money, benefit, charity, relief or aid is derived from voluntary donations or assessments or admission fees, dues or assessments, or any of them, collected or to be collected from the members thereof, or members of a class therein, and interest and accretions thereon; and wherein the money or other benefit, charity, relief or aid is applied to or accumulated for the uses and purposes herein specified or of such corporation, association or society, and the expenses of the management and prosecution of its business, shall be deemed to be engaged in the business of casualty insurance upon the co-operative or assessment plan and shall be subject to the provisions of this article.

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Section 205. Reserve or emergency fund.—Every such corporation, association or society, except casualty associations or societies, shal accumulate and maintain a reserve or emergency fund of an amount not less than the proceeds of one death or disability assessment, or periodical call on all policy or certificate holders thereof, and at

least equal to the amount of its maximum certificate or policy. Such fund, if not already accumulated, shall be accumulated by every existing corporation, association or society formed for like purposes, within six months from the time this article takes effect; and by every corporation, association or society hereafter formed under this article, within six months from the date of its incorporation, and shall be held for the benefit or protection of its members, their legal representatives or beneficiaries. In case such fund or any portion thereof shall have been used by the corporation for the purpose or purposes for which the same was created or accumulated, and the amount thereof thereby reduced to less than the proceeds of one death or disability assessment or periodical call, the amount of such reduction below the proceeds of one death or disability assessment or periodical call shall be made up and restored to said fund within three months thereafter. If such fund is in excess of double the proceeds of the last death or disability assessment or periodical call, upon the entire membership, the excess, or any portion thereof, may be used in reduction of assessments or premium calls upon policy or certificate holders; and if in excess of double such proceeds, and not less than the sum of one hundred thousand dollars, the *pro rata* excess on any policy or certificate terminated by death or surrender may be refunded to the holder or beneficiary provided that nothing contained in this article shall be construed to permit any contract promising any fixed cash payment to any living certificate or policyholder. (The remainder of this section relates to casualty and foreign insurance companies.)

Section 206. Reincorporation of existing societies.—Any existing domestic corporation, transacting the business of life or casualty insurance, or both, upon the co-operative or assessment plan, may reincorporate under the provi-

sions of this article, under its existing corporate name, by filing with the superintendent the declaration, required by this article, signed and duly acknowledged by a majority of its board of directors, with a statement in like manner signed and acknowledged by them, that such corporation has accumulated the fund required by this article of corporations formed thereunder, and that the same is deposited in bank or trust company, to be held and maintained for the payment of losses by death, sickness, physical disability or other purposes for which such fund must be held, and the certificate of the attorney general of the state, whereupon the superintendent shall record, and deliver to such corporation, a certified copy of such declaration and of such certificate, together with his license to transact business, and upon filing the same in the office of the clerk of the county wherein its principal office is located, the same shall thereupon be deemed to be incorporated under the provisions of this article. It shall not be obligatory upon any such existing corporation, to reincorporate hereunder, and any such domestic corporation may continue to exercise all the rights, powers and privileges not inconsistent with this article, pursuant to its articles of association or incorporation, the same as if reincorporated under this article.

Section 207. Visitation by superintendent: proceedings to restrain corporation from doing business.

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When the superintendent, on investigation, shall be satisfied that any corporation organized under the laws of this state, doing business in this state of the character defined in this article is insolvent because of matured death claims or other obligations due and unpaid exceeding its assets and death or disability assessments or periodical calls made or in process of collection, or has exceeded

its powers, failed to comply with any provision of law, or is conducting business fraudulently, he shall report the facts to the attorney-general, who, if he shall be of the opinion that the facts require such action, must thereupon apply to the supreme court, at a special term thereof, within the judicial district in which the principal office of such corporation, association or society within this state is located, for an order requiring the officers of such corporation, association or society to show cause, at a reasonable time and place within such district, why such corporation, association or society should not be restrained from continuing to transact business, with power to the court to adjourn the hearing thereon from time to time, not exceeding sixty days in all.

Section 208. Hearing thereon.—Such corporation, association or society shall be entitled to be heard, and to a trial by jury of the facts stated in the report, if the same shall be traversed, and to examine papers and witnesses under oath in the usual mode of trials of action. If the trial is by jury the court shall submit to the jury specific requests to find covering the matters in issue separately, and the jury shall return a special verdict upon each question submitted, and if by such verdict it shall be found that the corporation, association or society is insolvent because of matured death claims or other obligations due and unpaid exceeding its assets as hereinbefore provided, the court may render judgment that it and each officer thereof be perpetually enjoined from exercising any corporate rights, privileges or franchises, and that it be dissolved and that a receiver be appointed, an account taken, and an equitable distribution of its property among its creditors and members be made.

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Section 290. Laws repealed.—Of the laws enumerated

in the schedule hereto annexed, that portion specified in the last column is repealed. Such repeal shall not revive a law repealed by any law hereby repealed, but shall include all laws amendatory of the laws hereby repealed.

Laws of	Chapter	Sections.
1853	463	All.
1860	328	All.
1883	175	All.

CHAPTER 690, LAWS OF 1893.

AN ACT authorizing all insurance companies transacting business on the co-operative or assessment plan to reincorporate as a stock corporation under its existing corporate name.

Section 1. Any corporation incorporated under chapter one hundred and seventy-five of the laws of eighteen hundred and eighty-three, and transacting business under article sixth of chapter six hundred and ninety-two of the laws of eighteen hundred and ninety-two, known as the Insurance Law, is hereby authorized to reincorporate as a stock corporation under its existing corporate name, upon compliance with the provisions of article second of chapter six hundred and ninety-two of the laws of eighteen hundred and ninety-two, known as the Insurance Law.

Section 2. Before the superintendent of insurance shall be required to file and record a certificate of such reincorporation, he shall be satisfied that the same has been approved by a majority vote of the members of the company present and voting at a meeting of the insured called to consider the same, of which meeting a written or printed notice shall have been mailed to each member who shall have been such for thirty days directed to his address appearing on the company's books, at least thirty days before the day fixed for such meeting.

Section 3. Upon such reincorporation said company shall be entitled to the assets and shall be subject to the existing liabilities of the present company, including all contracts, policies or certificates with its members and agreements between such members and the subscribers to any guaranty or reserve fund heretofore made or approved at an annual meeting of the members or which may be ratified at the meeting called to consider such reincorporation.

LAWS OF 1893, CHAPTER 725.

AN ACT to amend the insurance law.

Section 1. The following sections of the insurance law are amended to read respectively as follows, to take effect immediately; and nothing in any of the following sections shall apply to any insurance corporation organized under articles six and seven of the insurance law:

* * * * * *

Section 52. Reorganization of existing corporations and amendments of certificates.—Any domestic corporation existing or doing business at the time this chapter takes effect, may, by a vote of a majority of its directors or trustees accept provisions of this chapter and amend its charter to conform with the same, upon obtaining the consent of the superintendent of insurance thereto in writing; and thereafter it shall be deemed to have been incorporated under this chapter (and every such corporation in reincorporating under this provision, may for that purpose so adopt in whole or in part a new charter, in conformity herewith, and include therein any or all provisions of its existing charter, and any or all changes from its existing charter, to cover and enjoy any or all the privileges and provisions of existing laws which might be so included and enjoyed if it were originally incorporated thereunder, and

it shall upon such adoption of and after obtaining the consent, as in this section before provided, to such charter, and filing the same and the record of adoption and consent in the office of the superintendent of insurance, perpetually enjoy the same as and be such corporation, and which is declared to be a continuation of such corporation which existed prior to such reincorporation; and the offices therein which shall be continued shall be filled by the respective incumbents for the periods for which they were elected and all others shall be filled in the manner by such amended charter provided). Every domestic insurance corporation may amend its charter or certificate of incorporation by inserting therein any statement or matter which might have been originally inserted therein; and the same proceedings shall be taken upon the presentation of such amended charter or certificate to the superintendent of insurance as are required by this chapter to be taken with respect to an original charter or certificate, and if approved by the superintendent of insurance, and his certificate of authority to do business thereunder is granted, the corporation shall thereafter be deemed to possess the same powers and be subject to the same liabilities as if such amended charter or certificate had been its original charter or certificate of incorporation, but without prejudice to any pending action or proceeding or any rights previously accrued.

Note: Matter indicated by parentheses above is new matter not contained in Section 52 of Chapter 690, Laws of 1892.

Laws of 1901, Chapter 722.

An Act to amend article one, section fifty-two of chapter six hundred and ninety of the laws of eighteen hundred and ninety-two, as amended by chapter seven hundred and twenty-five of the laws of eighteen hundred and

ninety-three, constituting chapter thirty-eight of the general laws and known as the insurance law.

Section 52. Reorganizations of existing corporations and amendment of certificates.—Any domestic corporation existing or doing business at the time this chapter takes effect, may, by a vote of a majority of its directors or trustees accept provisions of this chapter and amend its charter to conform with the same, upon obtaining the consent of the superintendent of insurance thereto in writing; and thereafter it shall be deemed to have been incorporated under this chapter, and every such corporation in reincorporating under this provision may for that purpose so adopt in whole or in part a new charter, in conformity herewith, and include therein any or all provisions of its existing charter, and any or all changes from its existing charter, to cover and enjoy any or all the privileges and provisions of existing laws which might be so included and enjoyed if it were originally incorporated thereunder, and it shall, upon such adoption of and after obtaining the consent, as in this section before provided, to such charter, and filing the same and the record of adoption and consent in the office of the superintendent of insurance, perpetually enjoy the same as and be such corporation, and which is declared to be a continuation of such corporation which existed prior to such reincorporation; and the offices therein which shall be continued shall be filled by the respective incumbents for the periods for which they were elected, and all others shall be filled in the same manner by such amended charter provided. Every domestic insurance corporation may amend its charter or certificate of incorporation by inserting therein any statement or matter which might have been originally inserted therein; and the same proceedings shall be taken upon the presentation of such amended charter or cer-

tificate to the superintendent of insurance, as are required by this chapter to be taken with respect to an original charter or certificate, and if approved by the superintendent of insurance, and his certificate of authority to do business thereunder is granted, the corporation shall thereafter be deemed to possess the same powers and be subject to the same liabilities as if such amended charter or certificate had been its original charter or certificate of incorporation, but without prejudice to any pending action or proceeding or any rights previously accrued. (This section shall apply to insurance corporations organized under or subject to article six of the insurance law as well as to insurance corporations organized under special charters or articles two and ten of the insurance law; all contracts, policies and certificates issued by such corporations prior to accepting the provisions of this chapter shall be valued as one year term insurance at the ages attained, excepting when such contracts, policies or certificates shall provide for a limited number of specified premiums or for specified surrender values, in which case they shall be valued as provided in article two, section eighty-four of the insurance law.)

Note: Matter indicated by parentheses above is new matter not contained in Section 52 as amended by Chapter 725, Laws of 1893.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1907.

THOMAS POLK, WILLIAM I. MOODY, JAMES L. LONG, SIMEON MARSH, MAX BOSHWITZ, THEODORE J. HASTINGS, WILLIAM H. FOOTE, DAVID L. SNODGRASS, EDWARD C. POOL, THOMAS J. DEUPREE, FRANK B. HAMILTON, THOMAS M. GATES and JAMES M. HOWARD,

Petitioners,

vs.

MUTUAL RESERVE FUND LIFE ASSOCIATION OF NEW YORK and MUTUAL RESERVE LIFE INSURANCE COMPANY, both domestic corporations of the State of New York,

Respondents.

MOTION FOR WRIT OF CERTIORARI.

Now come Thomas Polk, William I. Moody, James L. Long, Simeon Marsh, Max Boshwitz, Theodore J. Hastings, William H. Foote, David L. Snodgrass, Edward C. Pool, Thomas J. Deupree, Frank B. Hamilton, Thomas M. Gates and James

M. Howard, by Wm. Hepburn Russell, their counsel, and move this Honorable Court that it shall, by *certiorari* or other proper process directed to the Honorable Judges of the United States Circuit Court of Appeals, for the Second Circuit, require said Court to certify to this Court, for review and determination, the entire and complete transcript of record in a certain cause now pending before said Court of Appeals, wherein the petitioners herein are complainants-appellants and the respondents herein are defendants-appellees, and in which that Court has certified to this Honorable Court certain questions of law, and to that end they now tender herewith a petition, together with a copy of the record in said cause in said Circuit Court of Appeals.

WM. HEPBURN RUSSELL,
Counsel for Petitioners.

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1907.

THOMAS POLK, WILLIAM I. MOODY, JAMES L. LONG, SIMEON MARSH, MAX BOSHWITZ, THEODORE J. HASTINGS, WILLIAM H. FOOTE, DAVID L. SNODGRASS, EDWARD C. POOL, THOMAS J. DEUPREE, FRANK B. HAMILTON, THOMAS M. GATES and JAMES M. HOWARD,

Petitioners,

vs.

MUTUAL RESERVE FUND LIFE ASSOCIATION OF NEW YORK and MUTUAL RESERVE LIFE INSURANCE COMPANY, both domestic corporations of the State of New York,

Respondents.

Petition for a writ of certiorari to require the Circuit Court of Appeals for the Second Circuit to certify to the Supreme Court of the United States, for its review and determination, the whole record in a certain cause pending in said Circuit Court of Appeals, wherein the petitioners herein are complainants-appellants and the respondents herein are defendants-appellants.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

10 The petitioners, Thomas Polk, William I. Moody, James L. Long, Simeon Marsh, Max Boshwitz, Theodore J. Hastings, William H. Foote, David L. Snodgrass, Edward C. Pool, Thomas J. Deupree, Frank B. Hamilton, Thomas M. Gates and James M. Howard, respectfully show to this Honorable Court as follows:

FIRST.

That your petitioners are each citizens of the State of Tennessee.

SECOND.

That in a cause now pending between your said
11 petitioners and Mutual Reserve Fund Life Association of New York and Mutual Reserve Life Insurance Company in the Circuit Court of Appeals for the Second Circuit, upon an appeal from the Circuit Court of the United States for the Southern District of New York, the Judges of said Circuit Court of Appeals have certified to this Honorable Court certain questions of law for instructions thereon, together with a statement of the facts as a basis for such questions of law.

THIRD.

Your petitioners represent to this Honorable Court that in order to do justice to them the case should
12 be determined upon the whole record and upon all the facts in the case for the following reasons, to wit.:

On January 26, 1903, the complainants in said cause filed their amended bill of complaint in the office of the Clerk of the Circuit Court, and thereafter and on February 2, 1903, exceptions for scandal and impertinence taken by both of the respondents therein were filed in said Clerk's office, and on February 10, 1903, an order of reference was made to Arthur H. Masten, Esq., Master in Chancery, to report to said Court whether the said exceptions were well taken or not. On May 27, 1903, said Mas-

ter in Chancery filed his report, in which he allowed 13
certain of respondents' exceptions and disallowed certain other exceptions, to which Master's report both complainants and respondents took and filed exceptions, which said exceptions were brought on for hearing before said Circuit Court, and on the 12th day of March, 1904, said Circuit Court made its order upon said exceptions to said Master's report, in which said report was modified by said Court.

Thereafter, respondents demurred to said amended bill of complaint, as modified, to conform to the order of March 12, 1904, of said Circuit Court, and thereafter and on the 7th day of February, 1905, a decree was entered sustaining said demurrer and dismissing said amended bill of complaint, and the complain- 14
ants, electing to stand upon their said amended bill of complaint, duly prosecuted their appeal to the United States Circuit Court of Appeals for the Second Circuit, bringing up for review before said Circuit Court of Appeals the issues arising upon said demurrer as well as the issues arising upon the exceptions for scandal and impertinence and the rulings of the Master in Chancery and of the Circuit Court thereon, and presenting to the Circuit Court of Appeals certain questions arising upon the face of the complainants' said amended bill of complaint, involving constitutional questions under the Constitution of the United States.

Thereupon this cause came on for argument upon 15
said appeal in said Circuit Court of Appeals before the Honorables William J. Wallace, E. Henry Lacombe and W. K. Townsend, Circuit Judges, who, on the 28th day of May, 1906, after hearing argument of counsel, certified to this Honorable Court, the Supreme Court of the United States, the following questions of law presented by the assignments of error:

"1. Does the amended bill of complaint disclose that any contract obligations between complainants and the defendant Mutual Reserve Fund Life Asso-

ciation were impaired by the incorporation of the Mutual Reserve Life Insurance Company in 1902, pursuant to the provisions of Chapter 722, Laws of 1901, of the State of New York, and the transfer to said company of the assets, properties and membership of the Mutual Reserve Fund Life Association?

"2. Does the amended bill of complaint disclose and show that Chapter 722, Laws of 1901, of the State of New York, was in violation of Article I., Section 10, of the Constitution of the United States as impairing the obligations of a contract between the defendant Mutual Reserve Fund Life Association and complainants in so far as it authorized the reincorporation of said association as the Mutual Reserve Life Insurance Company?

"3. Does the amended bill of complaint disclose that Chapter 722, Laws of 1901, of the State of New York, is in violation of the provisions of Article XIV. of the Amendments to the Constitution of the United States in this, that the reincorporation of the Mutual Reserve Fund Life Association as the Mutual Reserve Life Insurance Company and the changes in the charter powers and franchises of the corporation have the effect of depriving complainants of their property without due process of law and of their vested contract rights and privileges and of their property rights under their contracts and agreements with respondent association?

"4. Does the amended bill of complaint disclose that Chapter 722, Laws of 1901, of the State of New York, was in violation of those provisions of Article XIV. of the Amendments to the Constitution of the United States which provide that no State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws?"

Since the argument of this cause before said 19
Circuit Court of Appeals and since the certification to this Honorable Court of the foregoing questions of Constitutional Law, Honorable William J. Wallace has resigned as Circuit Judge and retired from office as Judge of said Court, and Honorable W. K. Townsend is now deceased, leaving only Honorable E. Henry Lacombe now upon the bench of said Circuit Court of Appeals, who heard the argument of this cause upon its presentation to said Court.

FOURTH.

And your petitioners further show that should this cause be heard before this Honorable Court upon said certified questions of law only, then upon 20
the said questions being answered by this Honorable Court, this cause must necessarily be reargued in full before said Circuit Court of Appeals by reason of the resignation of Mr. Justice Wallace and the death of Mr. Justice Townsend as aforesaid, and that after the decision upon such argument by such Circuit Court of Appeals, application would undoubtedly be made to this Honorable Court for a writ of *certiorari* to bring before this Honorable Court all of the issues embraced in said cause, and this without regard to whether the same be adjudged in favor of the complainants or of the respondents.

21

FIFTH.

Your petitioners further show that as the demurrers of the respondents herein admit all of the facts well pleaded in complainants' said amended bill of complaint, therefore this cause, upon the record in the Circuit Court of Appeals, stands as a cause wherein the facts are undisputed, and only questions of law are submitted and remain for decision by that tribunal.

22 SIXTH.

And in this connection your petitioners further show to the Court that the questions arising in this cause upon this state of the record are novel, important and interesting in this, that they present the question whether or not the holder of a policy in a strictly mutual life insurance association is entitled to bring and maintain his bill in equity against said association and against a successor corporation pretending to be a reincorporation thereof, for the purpose:

FIRST.—Of an accounting as to the rights and interests of policyholders in a contractual reserve fund
23 created as a matter of contract, but not as a matter of legal requirement by said association, out of excess payments of premiums made to it by its members and policyholders, which fund it is alleged has been dissipated, wasted and misapplied through the fraudulent acts and conduct of the officers and directors of said association.

SECOND.—To determine whether a pretended reincorporation of said purely mutual life insurance association as a full reserve old line life insurance company, the same being made as the result of fraudulent practices and representations by the officers and directors of said association and without the knowledge or consent of the complainants and
24 other members and policyholders of said association, makes said pretended reincorporation fraudulent in fact and a violation of the constitutional rights of complainants and others as members of said associations, by totally varying, changing and altering their status and legal obligations, and whether the laws of the State of New York, under which said pretended reincorporation has been effected, are themselves unconstitutional and void as laws impairing the obligations of a contract and depriving complainants of their property without due process of law.

THIRD.—To determine whether or not a court of 25
the United States, sitting in equity, has jurisdiction in a controversy between citizens of different States of a suit brought by a policyholder in and member of a purely mutual life insurance association, to appoint receivers for said association:

(*a.*) Because of its insolvency and the alleged continued fraudulent waste and dissipation of the remaining corporate assets by its officers and directors.

(*b.*) Because of the alleged fraudulent conversion through the fraudulent acts, practices and deceits of the officers and directors of said association of the 26
assets of said association by a new corporation organized as an old line life insurance company with full legal reserve and claiming and pretending to be a reincorporation of said mutual association.

(*c.*) Because of the admittedly fraudulent acts and practices of the officers and directors of respondent association and respondent company and their continued domination of the affairs of said corporation, the impossibility of removing them from their positions under existing conditions as alleged in the amended bill of complaint, and their continued waste, dissipation and misapplication of the properties, assets and funds of said association and said 27
company.

FOURTH.—To determine whether or not the Circuit Courts of the United States in equity have jurisdiction at the suit of a policyholder in a purely mutual life insurance association to determine and adjudge the right of said association, in alleged violation of the contract rights and obligations of policyholders, to levy upon their policies and charge up upon the books of said asso-

28 ciation pretended liens aggregating large sums of money, treated and charged as loans made to said members and policyholders, when, in fact, such loans have never been made, and to have an accounting against said corporation as to the matter of the charging of said liens or loans, and an accounting as between complainants and other members and policyholders and said association and said company as to the matter of said liens or loans.

FIFTH.—To determine whether or not the Circuit Courts of the United States have jurisdiction in equity in a controversy between citizens of different States of a suit by a policyholder in and member of
29 a purely mutual life insurance association to decree an accounting as between the members and policyholders, and to appoint receivers because of the long continued insolvency of said association, the fraudulent conversion of its assets by another corporation and the fraudulent acts and conduct of its officers and directors causing said conversion to be made, and wasting, misapplying and dissipating the funds and assets of said association.

SEVENTH.

And your petitioners further show that all of the
30 facts upon which the above questions of law arise in this cause stand admitted in the record in the Circuit Court of Appeals, in so far as the same are well pleaded in complainants' amended bill of complaint, and that therefore this cause presents only questions of law for determination, which questions are so novel, important and interesting and have been subject to such wide diversity of view in the Circuit Courts of the United States and in the Circuit Courts of Appeal of the United States, that the same should now be finally heard and determined by this Honorable Court.

EIGHTH.

And your petitioners further show that by reason of the existence and certification of constitutional questions arising in this cause from the United States Circuit Court of Appeals for the Second Circuit to this Honorable Court, it is meet and proper that the entire case should be brought to this Court for final determination, because said constitutional questions cannot, in the state of the record in this cause, as petitioners verily believe, be properly considered and determined except upon the submission to this Court of all the facts out of which said constitutional questions arise, instead of upon the mere submission to this Court of a partial statement of said facts, and, in this connection, petitioners direct the attention of this Honorable Court to the fact that as the issues in the court below are issues of law only arising upon the admission by demurrer of the truth of all the allegations of fact well pleaded in complainants' amended bill of complaint, that the questions certified to this Honorable Court are not fully presented and cannot be accurately determined, unless this Court has before it, in connection with the consideration of said certified questions, the entire record in the Court below, showing to this Honorable Court, not only the facts stated by the Circuit Court of Appeals in connection with the certification of said questions, but all of the facts which stand admitted upon the face of the demurrers to complainants' said amended bill of complaint.

NINTH.

And your petitioners further show that should this motion for a writ of *certiorari* be granted and this Court direct that this cause be heard upon the entire record herein, the same will be in

harmony with the contention of counsel for the appellees before said Circuit Court of Appeals, where, upon the argument, it was contended by counsel for the appellees that by reason of the presence of constitutional questions presented in the record herein this cause should have been brought by appeal direct to this Honorable Court upon said questions. As to this, petitioners show that while it is true that said constitutional questions existed in the record, yet the first question arising upon the face of the entire record is whether or not the Circuit Court of the United States sitting in equity had jurisdiction to entertain the complainants' said amended bill of complaint; therefore it was proper to appeal in the first instance to the said Circuit Court of Appeals; but now, in view of the certification of said constitutional questions, it becomes and is proper to apply to this Honorable Court to direct that the entire record be transmitted to this Honorable Court so that the entire controversy between the parties may be here finally determined.

Wherefore, petitioners respectfully pray that a writ of *certiorari* may be issued out of and under the seal of this Court directed to the United States Circuit Court of Appeals for the Second Circuit, commanding the said Court to certify and send to this Court, on a day certain to be therein designated, the full and complete transcript of record in this cause, and that this case may be reviewed and determined by this Honorable Court thereupon.

And your petitioners will ever pray.

WM. HEPBURN RUSSELL,
Counsel for Petitioners.

STATE OF NEW YORK, }
County of New York, } ss.: 37

WM. HEPBURN RUSSELL, being duly sworn, upon his oath says that he is one of the counsel for the petitioners herein; that he prepared the foregoing petition and that the allegations thereof are true as he verily believes.

WM. HEPBURN RUSSELL.

Subscribed and sworn to before, me this 12th day of October, 1907.

FRANK E. CARSTARPHEN,
[SEAL.] Notary Public,
New York County.
No. 3872. 38

39

BRIEF AND ARGUMENT

IN SUPPORT OF

PETITION FOR WRIT OF CERTIORARI.

The petition for a writ of *certiorari* shows that in this case four questions arising under the Constitution of the United States have been certified to this Court for decision by the Circuit Court of Appeals for the Second Circuit.

(Petition, pp. 4–6.)

An examination of the Transcript of Record in the Circuit Court of Appeals shows that the case reached that Court by an appeal from a decree of the Circuit Court dismissing the amended bill of complaint for want of equity on the face of the bill.

(Transcript of Record in Circuit Court of Appeals, pp. 260–276.)

The statement of facts submitted with the constitutional questions certified to this Court also recites this fact, and the amended bill of complaint is set up in connection with the statement of facts made by the Judges of the Circuit Court of Appeals preliminary to the statement of the questions certified.

With the record in the Circuit Court of Appeals in this condition it seems manifest that this Court cannot properly dispose of the constitutional questions certified without first determining whether equity has jurisdiction to afford relief to the complainants in accordance with the prayer of their amended bill. If there is no jurisdiction in equity under the allegations of the bill then it is a vain and useless ceremony for this Court to determine the constitutional questions only perhaps, to have the bill dismissed for want of equity, no matter what the decision on the constitutional questions may be.

Again, the Petition shows (p.) that of the 43
Judges who heard the case in the Circuit Court of Appeals one has retired and another is dead. Hence the decision on the constitutional questions certified, when rendered by this Court, will not go back to the same Judges who certified it, but to a new bench of Judges, before whom the entire case must be reargued.

On such a state of the record in a case of manifest importance and considerable novelty is it not proper that this Court should exercise its power to require the complete record to be sent up in order that all questions involved in the case may be finally determined by this tribunal?

In a case somewhat analogous to this one, this 44
Court pursued the course here suggested.

Bedford *v.* Eastern Building & Loan Assn., 181 U. S., 227.

The questions involved in this case are of transcendent importance, not only to the complainants in this case, but to thousands of policyholders in the Mutual Reserve Fund Life Association and the Mutual Reserve Life Insurance Company. Both the constitutional questions and the primary question of jurisdiction are of such a nature as to call for final determination by this Court, and the entire case is one which might very properly have been brought to this Court upon an application for a writ 45
of *certiorari*, had there been a final judgment in the Circuit Court of Appeals, even though no questions had been certified. But in view of the certified questions, and the fact that the amended bill is before this Court in connection with these questions, it seems eminently fitting that the entire record should now be brought up in order that the preliminary and controlling questions as to the sufficiency of the amended bill and the jurisdiction in equity for the purposes of the bill may be conclusively determined.

That this case presents questions of the gravest practical importance, some of which have been the

46 subject of many diverse decisions in the different circuits and the Federal and State courts, an examination of the following cases will clearly show:

Strauss *v.* Mutual Reserve Fund Life Ass'n, 126 N. C., 971; 128 N. C., 465; s. c., 54 L. R. A., 605.

Ebert *v.* Mutual Reserve Fund Life Ass'n, 81 Minn., 116; s. c., 83 N. W. Rep., 506.

Haydel *v.* Mutual Reserve Fund Life Ass'n (C. C. A.), 104 Fed., 718.

Benjamin *v.* Mutual Reserve Fund Life Ass'n, 146 Calif., 34.

Gaut *v.* Mutual Reserve Fund Life
47 Ass'n, 121 Fed., 403.

In the last cited case the late Judge Hammond, of Tennessee, well said:

"There are judicial decisions * * * on both sides of the question as to the proper construction of the charter of this company and the contracts of insurance under it; but until it is settled by the Supreme Court there will be differences of opinion, for Judges differ like other people."

Hammond, *J.*, 121 Fed. Rep., 411.

This Court itself has held that the Mutual Reserve Fund Life Association should or would only make
48 assessments "whenever the death fund of the association is insufficient to meet the existing claims by death," and "for such sums as the Executive Committee may deem sufficient to cover said claims."

Mutual Reserve Fund Life Assn. *v.* Hamlin, 139 U. S., 297, 303.

But, on the other hand, in the case at bar, although the amended bill charges the making of assessments for the mere purpose of fixing a charge or "lien" upon the policies of members so as to re-

duce the amount of their claims under their policies and thereby change a liability into an asset in fraud of the policyholders, the Circuit Court dismissed the bill on the ground of a want of equity, and that insolvency, although repeatedly alleged, was not sufficiently shown by the bill, the allegations of which stood admitted by the demurrers. 49

Polk *v.* Mutual Reserve Fund Life Assn., 137 Fed., 273.

How a bill in equity could make out a plainer case of fraud, insolvency and gross mismanagement than does the amended bill in the case at bar it is hard for us to see.

See Amended Bill, Tr. in Polk Case, pp. 1-69. 50

That complainants are entitled to an accounting as to the "Reserve Fund," which they charge to have been fraudulently dissipated and misapplied (Polk Case Transcript, p. 40), and as to the "liens" charged against their policies as "loans," when no loans had been made (Polk Tr., 30-37, par. XVI.), seems too clear for argument.

And in a recent case the Circuit Court of Appeals for the Second Circuit has ruled that an accounting as to a reserve fund and its application, where gross frauds in relation to it are charged, is a proper subject of equity jurisdiction.

Brown *v.* Equitable Life Assurance Soc., 151 Fed., 1. 51

That the charges of fraud and mismanagement against the respondents as set forth in the amended bill of complaint in this cause are substantially true, is now a matter of public record as the result of the work of a legislative investigating committee and of the present Governor of the State of New York, while acting as counsel for such committee. (Testimony taken by Legislative Ins. Investigating Com. (1905), Vol. IV., pp. 3611-3617, 3620-3621,

52 3641-3643, 3667-3677; Vol. V., *Id.*, pp. 3976-3979, 4040-4044, 4059, 4099-4103, 4194-4203, 4335-4354.)

Assuming the facts alleged in complainants' amended bill to be true—and the demurrers admit them to be true—can it be doubted that upon such a state of facts equity has jurisdiction to afford relief to the complainants? But until this preliminary question of jurisdiction is settled how can this Court pass upon the questions certified to it by the Court below? And how can this question of jurisdiction be settled unless the writ of *certiorari* issue requiring the sending up of the entire case for final determination of all the questions in the case by this Court?

53 The amended bill in the case at bar presents, as we believe, a case that should strongly appeal to the conscience of a court of chancery. Its averments speak for themselves, and to them we refer this Court (Tr. in Polk Case, pp. 179-221).

Assuming the allegations of the bill to be true, it surely is time that some tribunal should finally determine whether complainants are entitled to any relief, and, if so, what that relief shall be.

The mere determination of the constitutional questions certified to this Court will not settle the case. Those questions are but incidental to the purpose and the main charges of the bill.

If resolved in favor of the contentions of com-
54 plainants, it is quite clear that the amended bill of complaint must be sustained and relief in some form be afforded; but if resolved against their contentions and in favor of respondents, yet it by no means follows that complainants are not entitled to relief upon the other allegations of their bill. Hence the real controversy is not so much over the constitutional questions as over the fraudulent management of respondent corporations, their insolvency and the frauds shown to have been perpetrated upon the

complainants in the matter of increased assessments, 55
"lien" charges and the misapplications of the "Reserve Fund."

How gross the frauds perpetrated by these respondents upon their members have been is not only shown by the reports of the legislative Insurance Investigating Committee above referred to, but has also been disclosed in an important case finally determined in England by the House of Lords.

Mutual Reserve Fund Life Ins. Co. *v.* Foster, L. T. Rep. (1903–1904), Vol. 20, p. 715.

There are to-day "a multiplicity of suits" pending against the respondents, as alleged in the amended 56
bill of complaint, and they are burdening the policyholders with increased assessments to meet corporate expenses incident to such litigation, while the echo of decisions against them for frauds perpetrated upon their members has been heard even in this Court.

Phelps *v.* Mutual Reserve Fund Life Assn. (C. C. A.), 112 Fed., 453.
Mutual Reserve Fund Life Assn. *v.* Phelps, 190 U. S., 147.
Woodward *v.* Mutual Reserve Life Ins. Co., 178 N. Y., 485.

That there can be no end to these controversies 57
until in a suit like the one at bar the status and rights of policyholders as against the respondents are determined by this Court seems probable, and for this, if no other reason, has been shown, we submit that the writ of *certiorari* should issue. How else, indeed, can this Court determine whether upon the facts of the case the constitutional rights of the petitioners have been invaded, the obligations of their contracts impaired, and they deprived of their property without due process of law as in the bill alleged?

58 That the entire record is necessary to enable this Court to answer the questions certified to, it is, we think, most manifest, and therefore we believe that the writ should issue.

Respectfully submitted,

WM. HEPBURN RUSSELL,
Solicitor for Petitioners.

D. L. SNODGRASS,
R. F. JACKSON,
CARUTHERS EWING,
WM. BEVERLY WINSLOW,
WM. HEPBURN RUSSELL,
59 Of Counsel for Petitioners.

60

NEW YORK LAWS CITED.

(See Rule 24.)

CHAPTER 267 OF THE LAWS OF NEW YORK OF 1875, entitled "AN ACT for the incorporation of societies or clubs for certain lawful purposes."

SECTION 1. Any five or more persons of full age, citizens of the United States, a majority of whom are also citizens of this State, who desire to form themselves into a society or club for social, mutual, benefit, benevolent, temperance, politics, economic, patriotic, gymnastic, athletic, military drill, musical, dramatic, literary, artistic, yachting, hunting, fishing, bathing, or lawful sporting purposes, may sign and acknowledge, before any officer authorized to take the acknowledgment of deeds in this State, and to file in the office of the Secretary of State, and also in the office of the clerk of the county in which the office of such society or club shall be situated, a certificate, in writing, in which shall be stated the name or title by which such society shall be known in law, the particular business and object of such society, the number of trustees, directors or managers to manage the same, and the names of the trustees, directors or managers for the first year of its existence, but such certificate shall not be filed unless by the written consent and approbation of one of the Justices of the Supreme Court of the district in which the principal office of such society or club shall be located, to be indorsed on such certificate; but nothing in this act contained shall authorize the incorporation of any society or club for any purpose repugnant to any statute of this State or prohibited thereby.

§ 2. Upon filing a certificate as aforesaid, the persons who shall have signed and acknowledged such certificate, and their associates and successors shall thereupon, by virtue of this act, be a body politic and corporate by the name stated in such certificate, and by that name they and their successors shall and may have succession, and shall be persons in law capable of suing and being sued; and they and their successors may have and use a common seal, and may alter and change the same at pleasure; and they and their successors by their corporate name shall, in law, be capable of taking, receiving, purchasing, leasing and holding real estate for the purposes of their incorporation, and for no other purpose, to an amount not exceeding the sum of five hundred thousand dollars in value, exclusive of the buildings and improvements thereon, and personal estate for like purposes to an amount not exceeding the sum of one hundred and fifty thousand dollars in value, exclusive of the buildings and improvements on its said real estate and the furnishing of its club house, but the clear annual income of such real and personal estate shall not exceed the sum of fifty thousand dollars; to make and adopt a constitution, by-laws, rules and regulations for the government of said corporation, and for the admission, voluntary withdrawal, censure, suspension and expulsion of its members, for the establishing and collection of the fees and dues of its members, the number and election of its officers, and to define their duties and compensation, and for the safe-keeping of its property, and from time to time to alter, modify or change such constitution, by-laws, rules and regulations; provided, however, that no constitution, by-laws, rules or regulations shall be made or adopted by said corporation which shall be inconsistent with the Constitution and laws of the United States or this State. The by-laws of any society or club for yachting purposes may provide that the qualified voters of such society or club

be limited to the owners of yachts in such manner that the owners of each yacht shall together cast but one vote in the meetings of such society or club, and in the election of its officers, trustees, directors or managers.

§ 3. The membership of any person in said society or corporation shall be determined by his death or by his voluntary withdrawal therefrom or by expulsion therefrom, and the manner of such withdrawal or expulsion of members shall be determined and provided by the by-laws of said corporation, and upon such death, withdrawal or expulsion all and every right, title and interest of the person whose membership is so determined, in or to or by reason of the said corporation, by reason of his former membership therein or in, or to its property or effects, shall at once cease and be forever at an end.

§§ 4 to 8, inclusive, omitted.

§ 9. All institutions formed under this act, together with their books and vouchers, shall be subject to the visitation and inspection of the Justices of the Supreme Court, or by any person or persons who shall be appointed by the Supreme Court for that purpose; and it shall be the duty of the trustees, or a majority of them, in the month of December in each year, to make and file in the County Clerk's offce, where the original certificate is filed, a certificate under their hands stating the names of the trustees and officers of such association or corporation, with an inventory of the property, effects and liabilities thereof, with an affidavit of the truth of such certificate and inventory, and also an affidavit that such association or corporation has not been engaged, directly or indirectly, in any other business than such as is set forth in the original certificate on file.

§ 10. Each corporation formed under this act shall possess the general powers conferred by and be subject to the provisions and restrictions of the third title of the eighteenth chapter of the first part of the Revised Statutes, except as the same are modified by this act (see these clauses from the Revised Statutes following:

§ 11. The Legislature may, at any time, amend annul or repeal any incorporation formed or created under this act.

Section 12 omitted (end of chapter).

1 R. S., 599, PART 1, CHAPTER 18, TITLE III.

OF THE GENERAL POWERS, PRIVILEGES AND LIABILITIES OF CORPORATIONS (referred to in § 10 above.)

SECTION 1. Every corporation, as such, has power,

1. To have succession by its corporate name, for the period limited in its charter; and when no period is limited, perpetually:

2. *To sue and be sued, complain and defend, in any court of law or equity:*

Subdivisions 3, 4 and 5 omitted.

6. To make by-laws not inconsistent with any existing law, for the management of its property, the regulation of its affairs, and for the transfer of its stock.

Section 2 omitted.

§ 3. In addition to the powers enumerated in the first section of this Title, and to those expressly given in its charter, or in the act under which it is or shall be incorporated, no corporation shall possess or exercise any corporate powers, except such as shall be necessary to the exercise of the powers so enumerated and given.

Sections 4 to 7, inclusive, omitted.

§ 8. The charter of every corporation, that shall hereafter be granted by the legislature, shall be subject to alteration, suspension and repeal, in the discretion of the legislature.

Sections 9 and 10 omitted.

CHAPTER 175 OF THE LAWS OF NEW YORK OF 1883, entitled "AN ACT to provide for the incorporation and regulation of co-operative or assessment life and casualty insurance associations and societies."

SECTION 1. Any number of persons not less than nine, residents of the state of New York, hereafter desiring to form an organization fraternal or non-fraternal, for the purpose of transacting the business of life or casualty insurance, or both life and casualty insurance upon the co-operative or assessment plan, may associate themselves together and effect such organization as hereinafter prescribed, and not otherwise.

§ 2. Such persons shall file in the office of the superintendent of the insurance department a declaration signed by each of the corporators and duly acknowledged before an officer authorized under the laws of this state to take the acknowledgment of deeds, and shall therein express their intention to form an organization for the transaction of life or casualty insurance, or both, upon the co operative or assessment plan, which said declaration shall also contain the proposed name of the association, corporation or society (which shall not be the same as, nor too closely resemble the name of any other corporation organized under the laws of this state): the place where the principal office for the

transaction of its business shall be located, which shall be at some place within this state; the mode and manner in which the corporate powers granted by this act are to be exercised; the mode and manner of electing the trustees, directors, or representatives, or other persons, by whatsoever name or title designated, who are to have and exercise the general control and management of its affairs, and all its funds, which election shall be in such manner as shall be prescribed by the by-laws of such corporation, association or society, or in case of fraternal societies by representatives chosen by subordinate lodges, councils or bodies; who shall be members of such society, and a majority of them citizens of the state.

§ 3 omitted.

§ 4. The corporators, trustees, directors, members or representatives as the case may be, of any association, corporation or society organized under this act, shall have power to make such by-laws not inconsistent with the constitution or laws of this state, or of the United States, as may be deemed necessary for the government of its officers and the conduct of its affairs, and the same, when necessary, to alter and amend; and they and their successors may have a common seal and may change and alter the same at their pleasure.

§ 5. Any corporation, association or society which issues any certificate, policy or other evidence of interest to, or makes any promise or agreement with, its members whereby upon the decease of a member any money or other benefit, charity, relief or aid is to be paid, provided or rendered by such corporation, association or society to the legal representatives of such member, or to the beneficiary designated by such member, which money, benefit, charity, relief or aid are derived from voluntary donations or from admission fees, dues and assessments or any of them collected or to be col-

lected from the members thereof, or members of a class therein, and interest and accretions thereon or rebates from amounts payable to beneficiaries or heirs; and wherein the paying, providing or rendering of such money or other benefit, charity, relief or aid, is conditioned upon the same being realized in the manner aforesaid; and wherein the money or other benefit, charity, relief or aid so realized is applied to the uses and purposes of such corporation, association or society, and the expenses of the management and prosecution of its business, shall be deemed to be engaged in the business of life insurance upon the co-operative or assessment plan, and shall be subject only to the provisions of this act.

§§ 6 to 10 omitted.

§ 11. Every charter created by or under this act for the purposes aforesaid shall continue until revoked by the judgment of a court of competent jurisdiction. Provided always, that charters hereafter to be filed in the insurance department shall be considered as abandoned and become inoperative and void, unless the corporators perfect their organization thereunder, and issue certificates of membership within the period of one year from the date of filing such charter.

§ 12. Any existing corporation, association or society transacting business of life or casualty insurance, or both, upon the co operative assessment plan, and incorporated under the laws of this state, may reincorporate under the provisions of this act by filing with said superintendent the declaration required by the second section of this act, signed and duly acknowledged by a majority of its board of directors, trustees or managers, and the certificate of conformity from the attorney-general of the state, whereupon the said superintendent shall record and deliver to such corporation, association or society a certified copy of such declaration and such certifi-

cate, together with his license to transact business, and upon the same being filed in the office of the clerk of the county wherein the principal office for the transaction of its business is located, the same shall thereupon be deemed to be incorporated under the provisions of this act. Provided always, that nothing in this act contained shall be construed as requiring or making it obligatory upon any such existing corporation, association or society to reincorporate under the provisions of this act; and any such existing corporation, association or society may continue to exercise all rights, powers and privileges not inconsistent with this act, pursuant to its articles of association or incorporation, the same as if reincorporated under this act.

Sections 13, 14 and 15 omitted.

§ 16. All corporations, companies, societies, organizations or associations of this or any other state or country transacting the business of life or casualty insurance on the co-operative or assessment plan, as referred to in the fifth and sixth sections of this act, are hereby made subject to all the provisions of this act. * * * Every such association, corporation or society other than secret fraternal societies now authorized as aforesaid to do business in this state must hereafter, before the adoption of any by-law or amendment thereto, cause the same to be mailed to the members and directors of such association, society or corporation, together with a notice of the time and place when the same will be considered, which notice shall be the same as hereinbefore required for a stated meeting. * * *

§§ 17 to 24 (end of Chap) omitted.

CHAPTER 400 OF THE LAWS OF NEW YORK OF 1890, entitled "AN ACT in relation to life and casualty insurance companies, associations and societies organized under the laws of this state."

§ 1. No order, judgment or decree, providing for an accounting or enjoining, restraining or interfering with the prosecution of the business of any life or casualty insurance company, association or society of this state or appointing a temporary or permanent receiver thereof, shall be made or granted otherwise than upon the application of the attorney-general, on his own motion or after his approval of a request in writing of the superintendent of the insurance department, except in an action by a judgment creditor or in proceedings supplementary to execution.

§ 2. This act shall take effect immediately.

CHAPTER 690 OF THE LAWS OF NEW YORK OF 1892, entitled "AN ACT in relation to insurance corporations, constituting chapter thirty-eight of the general laws."

(§§ 52 and 56 of Art. I.; §§ 70 and 84 of Art. II., and §§ 200, 201, 205, 260 and 210 of Article VI. of said law, being the sections thereof referred to in this brief, are the only sections here printed and are as follows:)

ART. I. (EXTRACTS.)

SECTION 52. REORGANIZATION OF EXISTING CORPORATIONS AND AMENDMENT OF CERTIFICATES.—Any domestic insurance corporation existing or doing business at the time this chapter takes effect, and not incorporated under any law repealed by this chapter, may, by a vote of a majority of its directors, accept the provisions of this chapter and amend its charter to conform with the same, upon obtaining the consent of the superintendent of insurance thereto in

writing; and thereafter it shall be deemed to have been incorporated under this chapter. Every domestic insurance corporation may amend its charter or certificate of incorporation by inserting therein any statement or matter which might have been originally inserted therein; and the same proceedings shall be taken upon the presentation of such amended charter or certificate to the superintendent of insurance as are required by this chapter to be taken with respect to an original charter or certificate, and if approved by the superintendent of insurance, and his certificate of authority to do business thereunder is granted, the corporation shall thereafter be deemed to possess the same powers and be subject to the same liabilities as if such amended charter or certificate had been its original charter or certificate of incorporation, but without prejudice to any pending action or proceeding or any rights previously accrued.

(The above section is as originally enacted in 1892, and subsequent amendments in 1893, Chap. 725, and in 1901, Chap. 722 are also printed, *post*, pp. 133-137. All other sections of this, Chap. 690 of the Laws of 1892, are printed as in effect Apr. 17, 1902, the date of attempted reincorporation of Mutual Reserve Life Insurance Company.)

§ 56. PROCEEDINGS FOR ACCOUNTING, INJUNCTION OR A RECEIVER MUST BE UPON APPLICATION OF THE ATTORNEY-GENERAL.—No order, judgment or decree providing for an accounting or enjoining, restraining or interfering with the prosecution of the business of any domestic insurance corporation or appointing a temporary or permanent receiver thereof, shall be made or granted otherwise than upon the application of the attorney-general, on his own motion, or after his approval of a request in writing therefor of the superintendent of insurance, except in an action by a judgment-creditor or in proceedings supplementary to execution.

ART. II. (EXTRACTS.)

§ 70. INCORPORATION.—Thirteen or more persons may become a corporation for the purpose of making any of the following kinds of insurance:

1. Upon the lives or the health of persons and every insurance appertaining thereto and to grant, purchase or dispose of annuities.

2. Against injury, disablement or death resulting from traveling or general accident and against disablement resulting from sickness and every insurance appertaining thereto.

3. Insuring any one against loss or damage resulting from accident to or injury suffered by an employe or other person, and for which the person insured is liable.

4. Guaranteeing the fidelity of persons holding places of public or private trust. Guaranteeing the performance of contracts other than insurance policies and executing or guaranteeing bonds and undertakings required or permitted in all actions or proceedings or by law required. Guaranteeing and indemnifying merchants, traders and those engaged in business and giving credit from loss and damage by reason of giving and extending credit to their customers and those dealing with them; and corporations authorized to do such last named business in this subdivision mentioned shall have all the powers conferred by section one hundred and seventy-eight of this chapter.

5. Against loss by burglary or theft or both.

6. Upon glass against breakage.

7. Upon steam boilers and upon pipes, engines and machinery connected therewith or operated thereby, against explosion and accident and against loss or damage to life or property resulting there-

from, and to make inspection of and to issue certificates of inspection upon such boilers, pipes, engines and machinery.

8. Against any other casualty specified in the charter which may lawfully be the subject of insurance.

9. Guaranteeing the validity and legality of bonds issued by any state or by any city, county, town, village, school district, municipality or other civil divisions of any state or by any private or public corporation. By making and filing in the office of the superintendent of insurance a certificate signed by each of them, stating their intention to form a corporation for the purpose or purposes named in some one of the foregoing subdivisions, specifying the subdivision; and setting forth a copy of the charter which they propose to adopt which shall state the name of the proposed corporation, the place where it is to be located, the kind of insurance to be undertaken, and under which of the foregoing subdivisions it is authorized, the mode and manner in which its corporate powers are to be exercised, the manner of electing its directors and officers, a majority of whom shall be citizens and residents of this state, the time of such elections, the manner of filling vacancies, the amount of its capital, and such other particulars as may be necessary to explain and make manifest the objects and purposes of the corporation. Such certificates shall be proved or acknowledged and recorded in a book to be kept for that purpose, and a certified copy thereof delivered to the persons executing the same. No such corporation shall be formed under this article for the purpose of undertaking any other kind of insurance than that specified in some one of the foregoing subdivisions, or more kinds of insurance than are specified in a single subdivision, except that a corporation may be formed for all the purposes combined, or any two

§ 83. DISTRIBUTION OF SURPLUS TO POLICY HOLDERS.—Any domestic life insurance corporation may ascertain at any given time, and from time to time, the proportion of surplus accruing to each policy from the date of the last to the date of the next succeeding premium payment, and may distribute the proportion found to be equitable either in cash, in reduction of premium or in revisionary insurance, payable with the policy, and upon the same conditions as therein expressed at the next succeeding date of such payment, notwithstanding anything in the charter of such corporation to the contrary.

or more of them, specified in the first, second and third subdivisions; or for all the purposes combined or any two or more of them specified in the second, third, fourth, fifth, sixth, seventh and eighth subdivisions. No one policy issued by any one corporation shall embrace more kinds of insurance than are specified in one of such divisions, but a policy may embrace risks specified in subdivisions two and three.

§ 84. VALUATION OF POLICIES.—The superintendent of insurance shall annually make valuations of all outstanding policies, additions thereto, unpaid dividends, and all other obligations of every life insurance corporation doing business in this state. All valuations made by him or by his authority shall be made upon the net premium basis, according to the standard of valuation adopted by the company for the obligation to be valued; provided, that in every case the standard of valuation employed shall be stated in his annual report. Any company may adopt different standards for obligations of different dates or classes, but if the total value determined by any such standard for the obligations for which it has been adopted shall be less than that determined by the legal minimum standard hereinafter prescribed, or if the company adopt no standard, said legal minimum standard shall be used. The legal minimum standard for contracts issued before the first day of January, nineteen hundred and one, shall be the actuaries' or combined experience table of mortality with interest at four per centum per annum, and for contracts issued on or after said day shall be the American experience table of mortalty with interest at three and one-half per centum per annum. The superintendent may vary the standards of interest and mortality in the case of corporations from foreign countries, and in particular cases of invalid lives and other extra hazards, and value policies in groups, use approximate averages for fractions of a year and otherwise,

and calculate values by net premiums or otherwise, and accept the valuation of the department of insurance of any other state in place of the valuation herein required if the insurance officer of such state accepts as sufficient and valid for all purposes the certificate of valuation of the superintendent of insurance of this state. ✱

ART. VI. (EXTRACTS.)

§ 200. INCORPORATION.—Nine or more persons may become a corporation for the purpose of transacting the business of life or casualty insurance, or both, upon the co-operative or assessment plan, fraternal or non-fraternal, by filing in the office of the superintendent of insurance a declaration signed by each of them and duly acknowledged, setting forth their intention to form a corporation for the transaction of life or casualty insurance, or both, upon the co-operative or assessment plan, the name of the proposed corporation, the place where its principal office shall be located within the state, the mode in which its corporate powers are to be exercised and of electing directors or other persons, by whatsoever name or title designated, who are to have and exercise the general control and management of its affairs and of its funds, which election shall be in such manner as shall be prescribed by its by-laws, or in case of fraternal societies, by representatives chosen by subordinate lodges, councils or bodies, who shall be members of such societies and a majority of them citizens of this state. Such declaration shall have endorsed thereon or annexed thereto and as a part thereof, the sworn statement of three of such persons that at least two hundred persons eligible under the proposed laws of the corporation to membership therein have in good faith made application in writing for membership.

If all the requirements of this chapter have been complied with, the superintendent shall file such declaration and record it with the certificate of the attorney-general, in a book to be kept for that purpose, and deliver to the corporation a certified copy

#Additional Sections from Art. 3

§ 85. WHEN ACTUAL PREMIUM IS LESS THAN NET PREMIUM.—When the actual premium charged for an insurance by any life insurance corporation doing business in this state is less than the net premium for such insurance computed according to the table of mortality and rate of interest prescribed in this article, such corporation shall be charged as a separate liability with the value of an annuity, the amount of which shall equal the difference between such premiums and the term of which in years shall equal the number of future annual payments due on such insurance at the date of the valuation.

§ 86. WHAT SHALL BE ALLOWED AS ASSETS.—In estimating the condition of any life insurance corporation under the provisions of this chapter, or in any examination made by him, or by an examiner appointed by him, the superintendent shall allow as assets only such investments as are authorized by the laws of this state, at the date of examination, and shall charge as liabilities, exclusive of the capital stock, all outstanding indebtedness of the corporation, and the premium reserve on policies, and additions thereto in force computed according to the table of mortality and rate of interest prescribed in this article. Any assets or securities lawfully held or acquired for the satisfaction, reduction or guarantee of any indebtedness to the corporation shall be allowed as assets at their just value in the judgment of the superintendent, but the total assets invested and otherwise of every domestic life insurance corporation shall be held to be accumulations for the exclusive benefit of policyholders, and no payment to a stockholder shall be made therefrom until all obligations to policyholders and creditors have been fully provided for, *including the reserve required by section eighty-four of this chapter to be determined by the superintendent of insurance.* * * *

of the papers so filed and recorded, with his license in writing to the corporation to engage in the business proposed in the declaration, which certified copy and license shall be filed in the office of the clerk of the county where the office of the corporation is to be located. Such corporation shall not commence the business of insurance until at least two hundred persons have subscribed in writing to be insured therein in the aggregate amount of at least four hundred thousand dollars, and have each paid in two per cent. on the amount of the insurance severally subscribed for in cash, and the same is deposited in bank to the credit of the mortuary fund to be held in trust for the benefit of the beneficiaries, and the superintendent of insurance shall have further certified that it has complied with the provisions of this chapter, and is authorized to transact business.

§ 201. WHAT CORPORATIONS TO BE SUBJECT TO THIS ARTICLE.—Any corporation, association or society which issues any certificate, policy or other evidence of interest to, or makes any promise or agreement with its members, whereby, upon the decease of a member any money or other benefit, charity, relief or aid is to be paid, provided or rendered by such corporation, association or society to his legal representatives, or to the beneficiary designated by him, which money, benefit, charity, relief or aid is derived from voluntary donations or from admission fees, dues, or assessments, or any of them, collected or to be collected from the members thereof, or members of a class therein, or interest, or accretions thereon, or accumulations thereof, or rebates from amounts payable to beneficiaries or heirs; and wherein the money or other benefit, charity, relief or aid so realized, is applied to or accumulated for the uses and purposes herein specified, or of such corporation, association or society, and the expenses of the management and prosecution of its business, shall be deemed to be engaged in the business of life insurance upon the co-operative or assessment plan,

and shall be subject to the provisions of this article.

Any such corporation, association or society, which issues any certificate, policy or other evidence of interest to, or makes any promise or agreement with, its members, whereby, upon the sickness or other physical disability of a member, and not by reason of having attained a certain age, any money or other benefit, charity, relief or aid is to be paid, provided or rendered by such corporation, association or society to such member or beneficiary designated by him, which money, benefit, charity, relief or aid is derived from voluntary donations or assessments or admission fees, dues or assessments, or any of them, collected or to be collected from the members thereof, or members of a class therein, and interest and accretions thereon; and wherein the money or other benefit, charity, relief or aid is applied to or accumulated for the uses and purposes herein specified or of such corporation, association or society, and the expenses of the management and prosecution of its business, shall be deemed to be engaged in the business of casualty insurance upon the co-operative or assessment plan and shall be subject to the provisions of this article.

§ 205. RESERVE OR EMERGENCY FUND.—Every such corporation, association or society, except casualty associations or societies, shall accumulate and maintain a reserve or emergency fund of an amount not less than the proceeds of one death or disability assessment, or periodical call on all policy or certificate holders thereof, and at least equal to the amount of its maximum certificate or policy. Such fund, if not already accumulated, shall be accumulated by every existing corporation, association or society formed for like purposes within six months from the time this article takes effect; and by every corporation, association or society hereafter formed under this article within six months from the date

of its incorporation, and shall be held for the benefit or protection of its members, their legal representatives or beneficiaries. In case such fund or any portion thereof shall have been used by the corporation for the purpose or purposes for which the same was created or accumulated, and the amount thereof thereby reduced to less than the proceeds of one death or disability assessment or periodical call, the amount of such reduction below the proceeds of one death or disability assessment or periodical call shall be made up and restored to said fund within three months thereafter. If such fund is in excess of double the proceeds of the last death or disability assessment or periodical call, upon the entire membership, the excess, or any portion thereof, may be used in reduction of assessments or premium calls upon policy or certificate holders; and if in excess of double such proceeds, and not less than the sum of one hundred thousand dollars, the *pro rata* excess on any policy or certificate terminated by death or surrender may be refunded to the holder or beneficiary provided that nothing contained in this article shall be construed to permit any contract promising any fixed cash payment to any living certificate or policy holder. Every such casualty association or society shall accumulate within six months from the time this article takes effect and maintain a reserve or emergency fund of at least eight thousand dollars, if the maximum policy issued by such association or society be for five thousand dollars or more or a reserve or emergency fund of two dollars for each five thousand dollars of insurance in force, if the maximum policy issued by such association or society be for less than five thousand dollars, and thereafter five per cent. of the amount realized on each periodical call shall be set apart and added thereunto, unless the same be already accumulated, until such fund shall be equal to two dollars on each five thousand dollars of insurance in force. In case such reserve or

emergency fund or any portion thereof shall have been used by any such corporation or society for the purpose for which the same was created or maintained, the amount so used shall be made up and restored to said fund within six months thereafter. Such fund may be held in cash, or invested in the same class of securities required for the investment of funds by domestic life insurance corporations.

No foreign corporation, association or society shall be authorized to transact any business authorized by this article within this state unless it furnishes evidence satisfactory to the superintendent of insurance that it has accumulated a fund equal in amount to that required by this section, and that such accumulation is permitted by the laws of the state or country where it is incorporated and that it is held for the benefit of policy or certificate holders only and invested as required by such laws. If any such corporation, association or society is authorized by the law under which it is incorporated to issue contracts of insurance not authorized by this article, it may be permitted to transact in this state the kind of business authorized by this article upon complying in all other respects with the requirements of this chapter and filing with the superintendent of insurance an agreement duly executed by its proper officers that such corporation, association or society will not enter into or issue within the state of New York any contract of insurance, policy or agreement not authorized by this article. Upon a breach of said agreement by any such corporation, association or society the superintendent of insurance shall forthwith revoke and cancel its authority to transact business in this state.

The annual report of the superintendent of insurance required in section 202 of this article shall be in lieu of all other reports required by law.

§ 206. REINCORPORATION OF EXISTING SOCIETIES.—Any existing domestic corporation, transacting the business of life or casualty insurance, or both, upon

#Follows § 206 on page 19.

§ 209. CORPORATIONS SUBJECT TO THIS ARTICLE; ANNUAL MEETINGS; EXAMINATIONS; TRANSFERS OF RISK; REINSURANCE.—Every corporation, company, society, organization or association of this or any other state or country transacting the business of life or casualty insurance upon the co-operative or assessment plan, as defined in this article, including those heretofore organized with a capital stock and transacting such business, but not including any that shall hereafter be organized with a capital stock, shall be subject to all the provisions of this article, *and not to the provisions of article two*, and every such corporation, company, society, organization or association of this state, shall hold, within the county in which its principal office is located in this state, a stated annual meeting of their members or policyholders or representatives of local boards or subordinate bodies, in such manner and subject to such regulations, restrictions and provisions as the constitution and by-laws of the same may provide. In case of secret or fraternal societies having a grand or supreme body, such meeting of the supreme or grand body may be at such time and place as may be designated by it.

At such meeting a full and specific report of all receipts and expenditures of the preceding year or since the last meeting, as the case may be, shall be submitted. Not less than five days' notice of each meeting shall be given to each director and to each member and policyholder, who shall have been such for thirty days, in such manner as the by-laws may direct, except that in lieu thereof such notice may be given to the subordinate body of a society having a grand or supreme body, or to a local board subordinate to the association. Every such association, corporation or society, other than secret fraternal societies now authorized to do business in this state, must hereafter, before the adoption of any by-law or amendment thereto, cause the same to

be mailed to the members and directors of such association, society or corporation, together with a notice of the time and place when the same shall be considered, which notice shall be the same as hereinbefore required for stated meetings.

All associations, societies, companies, corporations or organizations now transacting or hereafter desiring to transact the business of life or casualty insurance in this state upon any other plan than that defined in and by this article, shall comply with all the provisions of the general life and health insurance laws. No such corporation organized under the laws of this state shall transfer its risks to or re-insure them in any other corporation unless the contract of transfer or re-insurance is first submitted to and approved by a two-thirds vote of a meeting of the insured called to consider the same, of which meeting a written or printed notice shall be mailed to each member, certificate-holder or policyholder at least thirty days before the day fixed for such meeting. If such transfer or re-insurance shall be approved, every member, certificate-holder or policyholder of the corporation who shall file with the secretary thereof within ten days after the meeting a written notice of his preference to be transferred to some other corporation than that named in the contract, shall be accorded all the rights and privileges, if any, in aid of such transfer as would have been accorded under the terms of such contract had he been transferred to the corporation named therein.

No such corporation, association or society organized under the laws of this state shall transfer its risks or assets or any part thereof to, or re-insure its risks or any part thereof in, any insurance corporation or association of any other state or country which is not at the time of such transfer or re-insurance authorized to do insurance business in this state under the laws thereof, * * * * .

the co-operative or assessment plan, may reincorporate under the provisions of this article, under its existing corporate name, by filing with the superintendent the declaration, required by this article, signed and duly acknowledged by a majority of its board of directors, with a statement in like manner signed and acknowledged by them, that such corporation has accumulated the fund required by this article of corporations formed thereunder, and that the same is deposited in bank or trust company, to be held and maintained for the payment of losses by death, sickness, physical disability or other purposes for which such fund must be held, and the certificate of the attorney general of the state, whereupon the superintendent shall record, and deliver to such corporation, a certified copy of such declaration and of such certificate, together with his license to transact business, and upon filing the same in the office of the clerk of the county wherein its principal office is located, the same shall thereupon be deemed to be incorporated under the provisions of this article. It shall not be obligatory upon any such existing corporation, to reincorporate hereunder, and any such domestic corporation may continue to exercise all the rights, powers and privileges not inconsistent with this article, pursuant to its articles of association or incorporation, the same as if reincorporated under this article. #

§ 210. PAYMENT OF MAXIMUM AMOUNT OF POLICY; NOTICE OF ASSESSMENT.—Every policy or certificate hereafter issued by any corporation doing business under this article, and promising a payment to be made upon a contingency of death, sickness or accident, shall specify the sum of money which it promises to pay upon each contingency insured against, and the number of days after satisfactory proof of the happening of such contingency on which such payment shall be made. Upon the occurrence of such contingency unless the contract shall have been avoided by fraud, or by

breach of its conditions, the corporation shall be obligated to the beneficiary for such payment at the time and to the maximum amount specified in the policy or certificate. If the superintendent of insurance shall be satisfied upon investigation that any such corporation has refused or failed to make such payment for thirty days after it became due, and after proper demand, he shall notify the corporation to issue no new policies or certificates until such indebtedness is fully paid; and no officer or agent of the corporation shall make, sign or issue any policy or certificate of insurance while such notice is in force.

Each notice of assessment, premium or periodical call made by any such corporation, association or society, upon its members or any of them, shall truly state the cause and purpose of the same, and if the amount paid on the last death claim paid has not been paid in full at its maximum face value, the name of the deceased member, and the maximum face value of the certificate or policy, and the reason why not paid in full.

An affidavit made by the officer, bookkeeper or clerk of any such corporation, association or society, having charge of the mailing of such notice, that such notice was mailed, stating the date of mailing, shall be presumptive evidence thereof.

CHAPTER 690 OF THE LAWS OF NEW YORK OF 1893, entitled "AN ACT authorizing all insurance companies transacting business on the co-operative or assessment plan to re-incorporate as a stock corporation under its existing corporate name."

SECTION 1. Any corporation incorporated under chapter one hundred and seventy-five of the laws of eighteen hundred and eighty-three, and transacting business under article sixth of chapter six hun-

dred and ninety of the laws of eighteen hundred and ninety-two, known as the Insurance Law, is hereby authorized to incorporate as a stock corporation under its existing corporate name, upon compliance with the provisions of article second of chapter six hundred and ninety of the laws of eighteen hundred and ninety-two, known as the Insurance Law.

§ 2. Before the superintendent of insurance shall be required to file and record a certificate of such reincorporation, *he shall be satisfied that the same has been approved by a majority vote of the members of the company present and voting at a meeting of the insured called to consider the same, of which meeting a written or printed notice shall have been mailed to each member who shall have been such for thirty days directed to his address appearing on the company's books, at least thirty days before the day fixed for such meeting.*

§ 3. Upon such reincorporation said company shall be entitled to the assets and shall be subject to the existing liabilities of the present company, including all contracts, policies or certificates with its members *and agreements between such members and the subscribers to any guaranty or reserve fund heretofore made or approved at an annual meeting of the members or which may be ratified at the meeting called to consider such reincorporation.*

CHAPTER 725 OF THE LAWS OF NEW YORK OF 1893, entitled "AN ACT to amend the insurance law."

SECTION 1. The following sections of the insurance law are amended to read respectively as follows, to take effect immediately; and *nothing in any of the following sections shall apply to any insurance cor-*

poration organized under Articles SIX *and* SEVEN *of the insurance law:*

§§ 6, 9, 10, 11, 13, 32, 34 and 50 omitted.

§ 52. REORGANIZATION OF EXISTING CORPORATIONS AND AMENDMENTS OF CERTIFICATES.—Any domestic corporation existing or doing business at the time this chapter takes effect, may, by a vote of a majority of its directors or trustees accept provisions of this chapter and amend its charter to conform with the same, upon obtaining the consent of the superintendent of insurance thereto in writing; and thereafter it shall be deemed to have been incorporated under this chapter, and every such corporation in reincorporating under this provision, may for that purpose so adopt in whole or in part a new charter, in conformity herewith, and include therein any or all provisions of its existing charter, and any or all changes from its existing charter, to cover and enjoy any or all the privileges and provisions of existing laws which might be so included and enjoyed if it were originally incorporated thereunder, and it shall, upon such adoption of and after obtaining the consent, as in this section before provided, to such charter, and filing the same and the record of adoption and consent in the office of the superintendent of insurance, perpetually enjoy the same as and be such corporation, and which is declared to be a continuation of such corporation which existed prior to such reincorporation; and the offices therein which shall be continued shall be filled by the respective incumbents for the periods for which they were elected and all others shall be filled in the manner by such amended charter provided. Every domestic insurance corporation may amend its charter or certificate of incorporation by inserting therein any statement or matter which might have been originally inserted therein; and the same proceedings shall be taken upon the presentation of such amended charter or certificate to the superintendent of insurance as are required by

this chapter to be taken with respect to an original charter or certificate, and if approved by the superintendent of insurance and his certificate of authority to do business thereunder is granted, the corporation shall thereafter be deemed to possess the same powers and be subject to the same liabilities as if such amended charter or certificate had been its original charter or certificate of incorporation, but without prejudice to any pending action or proceeding or any rights previously accrued.

CHAPTER 722. LAWS OF NEW YORK OF 1901, entitled "AN ACT to amend article one, section fifty-two of chapter six hundred and ninety of the laws of eighteen hundred and ninety two as amended by chapter seven hundred and twenty-five of the laws of eighteen hundred and ninety-three, constituting chapter thirty-eight of the general laws and known as the insurance law."

SECTION 1. Section fifty two, article one, of chapter six hundred and ninety of the laws of eighteen hundred and ninety-two, as amended by chapter seven hundred and twenty-five of the laws of eighteen hundred and ninety-three, constituting chapter thirty eight of the general laws and known as the insurance law is amended to read as follows:

§ 52. REORGANIZATIONS OF EXISTING CORPORATIONS AND AMENDMENT OF CERTIFICATES.— Any domestic corporation existing or doing business at the time this chapter takes effect, may, by a vote of a majority of its directors or trustees accept provisions of this chapter and amend its charter to conform with the same, upon obtaining the consent of the superintendent of insurance thereto in writing; and thereafter it shall be deemed to have been incorporated under this chapter, and every such corporation in reincorpo-

rating under this provision may for that purpose so adopt in whole or in part a new charter in conformity herewith, and include therein any or all provisions of its existing charter, and any or all changes from its existing charter, to cover and enjoy any or all the privileges and provisions of existing laws which might be so included and enjoyed if it were originally incorporated thereunder, and it shall, upon such adoption of and after obtaining the consent, as in this section before provided, to such charter, and filing the same and the record of adoption and consent in the office of the superintendent of insurance, perpetually enjoy the same as and be such corporation, and which is declared to be a continuation of such corporation which existed prior to such reincorporation; and the offices therein which shall be continued shall be filled by the respective incumbents for the periods for which they were elected and all others shall be filled in the same manner by such amended charter provided. Every domestic insurance corporation may amend its charter or certificate of incorporation by inserting therein any statement or matter which might have been originally inserted therein; and the same proceedings shall be taken upon the presentation of such amended charter or certificate to the superintendent of insurance, as are required by this chapter to be taken with respect to an original charter or certificate, and if approved by the superintendent of insurance, and his certificate of authority to do business thereunder is granted, the corporation shall thereafter be deemed to possess the same powers and be subject to the same liabilities as if such amended charter or certificate had been its original charter or certificate of incorporation, but without prejudice to any pending action or proceeding or any rights previously accrued. [*This section shall apply to insurance corporations organized under or subject to article six of the insurance law as well as to insurance corporations organized under special charters or articles two and ten of the in-*

surance law: all contracts, policies and certificates issued by such corporations prior to accepting the provisions of this chapter shall be valued as one year term insurance at the ages attained, excepting when such contracts, policies or certificates shall provide for a limited number of specified premiums or for specified surrender values in which case they shall be valued as provided in article two, section eighty-four of the insurance law.]

The clause in brackets and italics above is the new matter added to § 52 by Chapter 722 of the Laws of 1901, at the instigation of the directors of the Mutual Reserve Fund Life Association for the fraudulent purposes and with the fraudulent objects charged in the amended bill (Tr., fols. 581–586. See, in this connection, § 1, Chapter 725, Laws of 1893 (*ante*, pp. 133–134)).

§ 2. This act shall take effect immediately.

(End of chapter.)

NEW YORK CODE OF CIVIL PROCEDURE.

SECTION 1784. Action by judgment creditor for sequestration, etc.

Where final judgment for a sum or money has been rendered against a corporation created by or under the laws of the State, and an execution issued thereupon to the sheriff of the county, where the corporation transacts its general business, or where its principal office is located, has been returned wholly or partly unsatisfied, the judgment creditor may maintain an action to procure a judgment sequestrating the property of the corporation, and providing for a distribution thereof, as prescribed in section 1793 of this act.

§ 1785. Action to dissolve a corporation.

In either of the following cases, an action to procure a judgment dissolving a corporation, created by or under the laws of the State, and forfeiting its corporate rights, privileges, and franchises, may be maintained, as prescribed in the next section:

1. Where the corporation has remained insolvent for at least one year.

2. Where it has neglected or refused for at least one year to pay and discharge its notes or other evidences of debt.

3. Where it has suspended its ordinary and lawful business for at least one year.

4. If it has banking powers, or power to make loans on pledges or deposits, or to make insurances, where it becomes insolvent or unable to pay its debts, or has violated any provision of the act, by or under which it was incorporated, or of any other act binding upon it.

§ 1786. (Am'd, 1880) *Id.;* by whom to be brought. An action specified in the last section may be maintained by the attorney-general, in the name and in behalf of the people. And whenever a creditor or stockholder of any corporation submits to the attorney-general a written statement of facts, verified by oath, showing grounds for an action under the provisions of the last section, and the attorney-general omits for sixty days after this submission, to commence an action specified in the last section, then, and not otherwise, such creditor or stockholder may apply to the proper court for leave to commence such an action, and on obtaining leave may maintain the same accordingly.

§ 2463. (Am'd 1886) Cases where this chapter is not applicable; what property cannot be reached.

This article does not apply, where the judgment debtor is a corporation created by or under the laws of the State, or a foreign corporation specified in § 1812 of this act, except in those actions or special proceedings brought by or against the people of the State. Nor does it authorize the seizure of, or other interference with, any property, which is expressly exempt by law from levy and sale by virtue of an execution; or any money, thing in action, or other property, held in trust for a judgment debtor, where the trust has been created by, or the fund so held in trust has proceeded from a person, other than the judgment debtor; or the earnings of the judgment debtor for his personal services, rendered within sixty days, next before the institution of the special proceeding; when it is made to appear by his oath or otherwise, that those earnings are necessary for the use of a family, wholly or partly supported by his labor.

APPENDIX.

THOMAS POLK *et al.* vs. MUTUAL RESERVE FUND LIFE ASSOCIATION *et al.*	United States Circuit Court of Appeals, Second Circuit.

MATERIAL PARTS OF COMPLAINANTS' CERTIFICATES OR POLICIES, SHOWING FORMS, PROVISIONS AND CONDITIONS OF MEMBERSHIP.

"EXHIBIT B" TO AMENDED BILL: CERIFICATE OF COMPLAINANT JAMES N. HOWARD.

The certificate of membership and policy of insurance of the complainant James N. Howard bears date the 27th day of October, 1888, and on the first page, in the body of the certificate, contains, in the order of their statement, the following propositions or clauses, which we number in order merely as a matter of convenience.

FIRST PAGE:

(1.) "If this certificate or policy of insurance shall have been in continuous force until five years from its date, it shall thereafter be incontestable for any cause except nonpayment of dues or mortuary premium at the times and in the manner herein stipulated, provided the age of the member is correctly stated in the application therefor."

(2.) "MUTUAL RESERVE FUND LIFE ASSOCIATION, NEW YORK, U. S. A.

Number	Annual Dues
78091	$15.00 "

(3.) "In consideration of the application FOR THIS CERTIFICATE OF MEMBERSHIP or policy of insurance, which is hereby referred to and made a part of this contract, and of each of the statements made therein * * * the Mutual Reserve Fund Life Association does hereby receive James N. Howard of Memphis, County of Shelby, State of Tennessee, as A MEMBER OF SAID ASSOCIATION; and upon the consideration aforesaid, and upon the further consideration, and upon the condition of the payment of the dues for expenses to be paid on or before the twenty-seventh day of October in every year during the continuance of this certificate or policy of insurance, and also upon the further condition of the payment of all mortuary premiums payable at the Home Office of the Association in the City of New York within thirty days from the first week day of the months of February, April, June, August, October and December of each and every year during the continuance of this certificate or policy of insurance and subject to all the provisions, requirements and benefits stated on the second page of this certificate or policy of insurance, which are hereby referred to and made a part of this contract, there shall be payable to the legal representatives of said member the sum of Five Thousand Dollars within ninety days after acceptance of satisfactory evidence to the Association of the death of said member."

(4.) Clause one above quoted is here repeated in the body of the certificate.

(5.) Here follows the corporate seal and the signature of the corporate officers purporting to be signed and sealed "at the City of New York this 27th day of October, one thousand eight hundred and eighty-eight."

SECOND PAGE: 7

The second page of said complainant's certificate, copied in full with the capitalization and typographical arrangement of said page followed as nearly as may be, is as follows:

"PROVISIONS, REQUIREMENTS AND BENEFITS.

"I. Within thirty days from the first week day of the months of February, April, June, August, October and December of each and every year during the continuance of this Certificate, or Policy of Insurance, there shall be payable to the Association a Mortuary Premium, for such an amount as the Executive Committee of the Association may deem requisite, which amount shall be at such rates, according to the age of each member, as may be established by the Board of Directors, and the net amount received, as provided in the Constitution or By-Laws of said Association, less twenty-five per cent. to be set apart for the Reserve or Emergency Fund, as hereinafter provided, shall go into the Death Fund to meet the current mortality of the Association. 8

"II. Twenty-five per cent. of the net receipts from mortuary premiums paid under this Certificate, or Policy of Insurance, during a period of fifteen years from its date, shall be added to the Reserve or Emergency Fund, which shall be held as provided in the Constitution or By-Laws of the Association; deposited with a Trust Company, or Companies; deposited with departments constituted by governmental or legal authority; and upon the order of the Board of Directors of the Association shall be securely invested in United States Bonds, Mortgages, or other interest bearing securities, for the exclusive benefit of the members of the Association, and the interest on the same, as it accrues, shall be placed to the credit of the Death Fund, to be used in providing for the current death claims. The Reserve or Emergency Fund above $100,000 may be 9

applied to the payment of claims in excess of the Actuaries' Tables of Mortality, and when any claim by death is due, after a Mortuary Premium Call upon each member of the Association has been made, according to the Rules of the Association, to making up any deficiency that may then exist in the Death Fund. No claim is payable by the Association except from the Death Fund of the Association at the time of said death, or from any monies that shall be realized to the said fund from the next Mortuary Premium Call made, or from the Reserve or Emergency Fund as herein provided.

"III. The Annual Mortuary Premiums on this Certificate, or Policy of Insurance, after the same has been in force fifteen years from its date, shall not include any further contributions to the Reserve or Emergency Fund, nor shall the net amount of such Annual Mortuary Premiums thereafter exceed the annual premiums required by the Actuaries' tables of mortality, or the actual mortality experience of the Association.

"And after the expiration of said fifteen years there shall be credited to this Certificate, or Policy of Insurance, if then in force, the equitable proportion of the then total surplus Reserve or Emergency Fund accumulations, in which this Certificate or policy is then entitled to participate, including participation in the contribution to such surplus Reserve or Emergency Fund under this Certificate or Policy, and also in the then equitable share of such Reserve or Emergency Fund accumulations contributed thereto by members (otherwise participating,) whose policies have terminated by death, expiry or lapse, which said proportion or sum shall be then ascertained and determined by the Actuary of said Association, and the amount so ascertained and determined shall be available to the member insured under this Certificate or Policy, in manner following, that is to say:

"FIRST.– At the option of said member, provided he shall notify said Association in writing at least one year before the expiration of said fiteen years, that he desires to have said sum paid as a tontine accumulation, then, and in that event, this Certificate or Policy shall thereupon, on the completion of said term of fifteen years, be payable only as a CASH TONTINE ACCUMULATION, so ascertained and determined as aforesaid, and SHALL BE PAID IN CASH TO SAID MEMBER upon the surrender hereof to said Association.

"SECOND.—If said member shall not exercise said option, and such surplus accumulations shall not be applied as aforesaid, then the same, after the expiration of said period of fifteen years, SHALL BE AVAILABLE AS CASH towards PAYMENT OF FUTURE DUES AND MORTUARY PREMIUMS UNDER THIS CERTIFICATE OR POLICY.

"IV. This Contract is not binding until the written application therefor shall have been received, accepted, and this Certificate, or Policy of Insurance, issued by the Association, and delivered to said member, in person, during his life, while in good health, nor until the admission fee is paid thereon. No Agent of the Association has authority to make, alter or discharge contracts, waive forfeitures, extend credit, or grant permits, and no alteration of the terms of this Contract shall be valid, and no forfeiture thereunder shall be waived, unless such alteration or waiver shall be in writing, and signed by the President or Vice-President and one other officer of the Association.

"V. A notice of a Mortuary Premium, or other notice addressed to a member, or other person, at the post office address appearing upon the books of the Association, shall be deemed a sufficient notice, and affidavit of, or proof of addressing and mailing the same according to the usual course of business of

said Association, shall be taken and admitted as evidence, and shall be, constitute, and be deemed and held to be conclusive proof of due notice to said member and every person accepting or acquiring any interest hereunder. And in the event of the non-receipt by a member of a Mortuary Premium notice on or before the first week day of February, April, June, August, October and December of each and every year, it shall be nevertheless a condition precedent to the continuance of this Certificate, or Policy of Insurance, in force, that an amount equal at least to the amount of the next preceding Mortuary Premium paid, shall be paid said Association within thirty days from the first week day of February, April, June, August, October and December of each and every year. Notice that a Mortuary Premium is payable to said Association on the first week day of February, April, June, August, October and December of each and every year is hereby given and accepted, and any further or other notice is expressly waived.

"VI. Payment of dues and mortuary premiums as herein provided, shall be made by the member so long as such member may desire to keep this Certificate or Policy in force; provided, however, that if this Certificate or Policy has been in force for five years from its date, that then and in that event, and thereafter and before the expiration of ten years from its date, death shall occur within SIX MONTHS from the date of maturity of dues unpaid, or within SIX MONTHS from date of the mortuary call which such member has omitted or neglected to pay, this Certificate or Policy shall nevertheless be paid and payable to the beneficiary hereunder in the same manner as if payment of such dues or mortuary premiums had been made when due. And if this Certificate or Policy shall have been in force for ten years from its date, that then and in that event, and thereafter and before the expiration of fifteen years from its date,

death shall occur within ONE YEAR from the date of maturity of dues unpaid, or within ONE YEAR from date of the mortuary call which such member has omitted or neglected to pay, this Certificate or Policy shall nevertheless be paid and payable to the beneficiary hereunder in the same manner as if payment of such dues or mortuary premiums had been made when due.

"VII. No assignment or transfer of this Certificate, or Policy of Insurance, shall be valid until a duplicate or a certified copy thereof shall be delivered to the Association at its Home Office, and the same approved by its Secretary or Assistant Secretary, and any assignment or transfer without delivery of the same or a certified copy thereof to the Association and approval thereof by its Secretary or Assistant Secretary, shall render this Certificate or Policy of Insurance, null and void. Under no circumstances shall the Association be in any way responsible for the validity of any assignment or transfer. An insurable interest, existing at the time of the assignment or transfer must be shown by all claimants, at time of claim hereunder; and claims by any creditor as beneficiary of assignee, shall not exceed the amount of actual *bona fide* indebtedness of the member to him existing at the time of said death, together with any payments made to the Association under this Certificate, or Policy of Insurance, by such creditor, with interest at six per cent. per annum, and this Certificate, or Policy of Insurance, as to all amounts in excess thereof shall be void.

"VIII. The proofs of the death by which this Contract matures shall include full and true answers, under oath, to all questions asked by the Association, relating to the life, health and death of the member. When proof of death shall be made by presumption arising from disappearance or circumstantial evidence, no claim shall accrue or be payable until the presumption of death shall by the

22 rules of law be complete, and only on the further condition that all dues and mortuary premiums under this Certificate, or Policy of Insurance, shall continue to be paid to the Association until the completion of said period, in the same manner and at the same times as though said member were living.

"IX. Death of the member by his own hand, whether voluntary or involuntary, sane or insane at the time, is not a risk assumed by the Association in this Contract, but in every such case there shall be payable, subject to all the conditions of this Contract, only a sum equal to the amount of the mor-
23 tuary premiums paid by said member, with six per cent. interest per annum; but the Board of Directors or the Executive Committee of the Association, at their option, may in such case order such further payment as may to them see just and equitable, not exceeding in the aggregate the maximum amount of this Contract.

"X. This contract shall be governed by, subject to, and construed only according to the Laws of the State of New York, the place of this Contract being expressly agreed to be the Home Office of said Association in the City of New York; and said Association shall not be held liable, and no action at law
24 or suit in equity shall be brought or maintained hereon or recovery had, unless such action or suit is commenced within one year from the date of the death of said member; and if any action or suit is brought after that time the lapse of time shall be a conclusive bar thereto.

"XI. No personal liability of the member is incurred by becoming a member of this Association, and the continuance of this Certificate, or Policy of Insurance, and payments by the member are voluntary, at the option of the member, to continue only

so long as the member may desire to keep this Certificate, or Policy of Insurance, in force, but a failure to make the payments as herein stipulated will terminate this Contract. This Contract, on the part of the Association, is a bi-monthly term Contract, renewable at the option of the member, before expiration, upon payment of the dues and mortuary premiums at the times and in the manner in this Contract provided.

"XII. This Certificate, or Policy of Insurance, is also issued and accepted subject to the express condition that if any of the payments stipulated in this Contract shall not be paid on or before the day of the date as provided in this Contract at the Home Office of the Association in the City of New York, or to a duly authorized Collector of the Association upon a receipt signed by its President, Secretary or Treasurer; or if said member shall enter any military or naval service whatsoever (the militia when not in actual service excepted), without the consent of this Association given in writing by the President or Secretary thereof; or if death shall be caused by or from the effects of engaging in any duel or in violation of any law, or at the hands of Justice; or if any statement made in the application for this Certificate, or Policy of Insurance, is in any respect untrue, or if any of the agreements in said application are violated by said member; then, and in each and every such case, the consideration of this Contract shall be deemed to have failed, and this Certificate, or Policy of Insurance, shall be null and void, and all payments made thereon shall be forfeited to the Association."

THIRD PAGE:

The third page of said certificate contains a certificate by the Central Trust Company of New York, which, copied in full, is as follows:

"CERTIFICATE FROM THE CENTRAL TRUST COMPANY OF NEW YORK.

F. P. OLCOTT, PRESIDENT.

Statement of the Reserve or Emergency Fund.

MUTUAL RESERVE FUND LIFE ASSOCIATION,
New York City.
October 18th, 1888.

Total amount of the Reserve or Emergency Fund.....		$1,710,906 01
HELD AND INVESTED AS FOLLOWS:		
Bonds secured by First Mortgages upon Real Estate in the City of New York, held by The Central Trust Company of New York, Trustee.....	$1,156,000 00	
Bonds and Mortgages deposited with Insurance Department, State of New York.....	200,000 00	
Cash on deposit with The Central Trust Company of New York, Trustee....	201,406 01	
Cash on deposit with Bank of England, for Insurance Department of England	97,500 00	
Bonds and Cash on deposit with Insurance Department, Dominion of Canada.....	50,000 00	
Cash on deposit with Third National Bank, Boston, Mass	5,000 00	
St. Louis, Mo., 3 65-100 per cent. Bond, on deposit with Insurance Department, State of Missouri	1,000 00	
Total		$1,710,906 01

THIS IS TO CERTIFY, That THE CENTRAL TRUST COMPANY OF NEW YORK, held on the eighteenth day of October, 1888, under the agreement by and between the MUTUAL RESERVE FUND LIFE ASSOCIATION and this Company, as Trustee, dated October 18th, 1882, One Million, Three Hundred and Fifty-seven Thousand, Four Hundred and Six Dollars and one Cent ($1,357,406.01) of the above stated Reserve Fund, as follows:

In Bonds secured by First Mortgage upon well improved Real Estate in the City of New York, and not exceeding 60 per cent. of a conservative appraised cash value of said Real Estate.....	$1,156,000 00
In cash, deposited with us (including Special Certificate No. 105 for $15,000, issued by this Company, subject to the terms thereof,)...	201,406 01
Total amount held by The Central Trust Company of New York, Trustee.....	$1,357,406 01

CENTRAL TRUST COMPANY OF NEW YORK,
By F. P. OLCOTT, President.

Dated New York, October 18th, 1888."

FOURTH PAGE:

The fourth or cover page of said certificate is divided up so as to fold in the usual manner, presenting thus three surfaces upon which different printed matter appears. The outside or title part shows the following:

(1.) No. 78,091.
(2.) Mutual Reserve Fund Life Association, Potter Building, Park Row, New York, U. S. A.
(3.) Cash surplus over $1,800,000.00.
(4.) Policy of Insurance. James N. Howard.
Date, October 27, 1888.
Amount, $5,000.
Admission Fee, $20.
Annual Dues, $15.

On another part of this fourth page appears a blank form of receipt to be signed by beneficiaries in the event of the death of the member, while upon the third part of the fourth page appears the following:

COST OF ADMISSION AND ANNUAL DUES.

Amount of Certificate.	Admission fee, payable In Advance.	Annual Dues.
$1,000	$8 00	$3 00
2,000	12 00	6 00
3,000	15 00	9 00
4,000	17 50	12 00
5,000	20 00	15 00
10,000	40 00	30 00
15,000	60 00	45 00
20,000	80 00	60 00

"All applicants must be in good health and first class in every respect. Applicants for $20,000 must not be over 55 years of age, and be recommended by two physicians on separate examinations.

"MEDICAL EXAMINATION EXTRA.

"RATES OF MORTUARY CALLS AND COMPARISON OF COST.

"At the times within provided, to wit: On the first week day of the months of February, April, June, August, October and December of each year, or within thirty days thereafter respectively, the member shall pay his proportion of the maximum rates stated below, according to age and amount of insurance, and as may be requisite, as within provided, to pay death claims and to provided for the Reserve or Emergency Fund. Should the mortality of the Association in any year require an amount in excess of said maximum rates, applicable to the Death Fund, such excess shall be paid from the Reserve or Emergency Fund as within provided.

Age.	Maximum amount which Can be Collected annually on each $1,000 Insurance.	OLD LINE RATES. Being more than twice the Amount required to pay their Death Claims in any year during the Past Forty Years.
25	$10 76	$19 89
26	10 84	20 40
27	10 93	20 93
28	11 03	21 48
29	11 13	22 07
30	11 24	22 70
31	11 35	23 35
32	11 48	24 05
33	11 63	24 78
34	11 77	25 56
35	11 93	26 38
36	12 12	27 25
37	12 32	28 17
38	12 55	29 15
39	12 79	30 19
40	13 17	31 30
41	13 52	32 47
42	13 88	33 72
43	14 24	35 05
44	14 60	36 46
45	14 96	37 97
46	15 43	39 58
47	16 00	41 30
48	16 68	43 13
49	17 48	45 09
50	18 37	47 18
51	20 45	49 40
52	22 70	51 78
53	24 95	54 31
54	27 20	57 02
55	29 45	59 91
56	31 70	63 00
57	33 95	66 29
58	36 20	69 82
59	38 45	73 60
60	40 70	77 63

37

38

39

40 "The maximum rate above stated is based upon the Mortality Tables and the experience of the Association, and is for current ages Members desiring to make payments annually in advance, can do so at above rates, and the amount not required during the year will be returned as a dividend, or will be applied to reduce the next annual payment."

"EXHIBIT N" TO AMENDED BILL; CERTIFICATE OF COMPLAINANT THOMAS N. GATES:

FIRST PAGE:

The form of the first page of this certificate is
41 practically identical with the first page of the certificate of complainant Howard. The number of the certificate is 60,718, the annual dues $10. The date of the certificate is the 28th day of May, 1890; but, the number of the policy, as above stated, is 60,718, a number anterior to the number of the certificate of complainant Howard, and at the bottom of page one thereof appears the following clause written in ink:

"This policy is issued in lieu of the policy of the same number which was issued May 19, 1887." Presumably the certificate of May 19, 1887, was identical in its form, terms and conditions with this certificate issued in lieu of it. One reason for this pre-
42 sumption is that at the bottom of the first page of the Gates certificate appears the formula: "Entered according to Act of Congress in the year eighteen eighty seven," and the word "eighty" printed as a part of the testimonial and signature clause to the certificate is crossed out with red ink and the word "ninety" written in the blank left after the printed word "eighty." Hence, it is a fair presumption, unless the contrary appears, that the original certificate issued on May 19, 1887, was identical with the substitute certificate of the 28th of May, 1890. In this connection attention is directed to the fact that the cover page of this certificate shows its date

as September 7, 18[illegible]6, which probably refers to the 43
date of the application.

The language of the second page of "Exhibit N" differs from that of "Exhibit B" (*Ante*, p. 3) in the following respects:

Paragraph I. These are the same, except that the last clause is changed in Exhibit "N" to read as follows (omitted words in brackets):

"To be set apart for the Reserve [or Emergency] Fund [as hereinafter provided] shall go into the Death Fund to meet the current mortality of the Association."

Paragraph II. This paragraph in "Exhibit N" 44
reads as follows:

"II. Twenty-five per cent. of said net receipts shall constitute a Reserve Fund, which shall be deposited with a Trust Company, or companies, or departments constituted by governmental or legal authority, and upon the order of the Board of Directors of the Association shall be securely invested in United States Bonds, Mortgages, or other interest bearing securities, for the exclusive benefit of the members of the Association, and the interest on the same, as it accrues, shall be placed to the credit of the Death Fund, to be used in providing for the current death 45
claims. The Reserve Fund above $100,000 and in excess of sums represented by outstanding bonds, may be applied to the payment of claims in excess of the Experience Tables of Mortality, and when any claim by death is due, after a Mortuary Premium Call upon each member of the Association has been made, according to the rules of the Association, to making up any deficiency that may then exist in the Death Fund. No claim is payable by the Association except from the Death Fund of the Association at the time of said death, or from any monies that shall be realized to the said fund from

46 the next Mortuary Premium Call made, or from the Reserve Fund as herein provided."

Paragraph III. These paragraphs are very different in the two policies. The substance of paragraph III of "Exhibit B" (*Ante*, p. 4), is not included in "Exhibit N." In lieu thereof is the following:

"III. After the expiration of each period of five years, during the continuance of this Certificate of Membership, or Policy of Insurance, a Bond shall be issued for an equitable proportion of the Reserve Fund, and the principal of said Bond shall be available ten years from its date towards paying future dues and mortuary premiums under this Certificate
47 or Policy of Insurance; and, should membership hereunder cease from any cause, said Bond shall at once become null and void, and any portion of said principal not thus used shall be applied to increase the Bonds issued at the next quinquennial apportionment to other members of the Association holding Certificates, or Policies of Insurance, issued during the same year as this Certificate, or Policy of Insurance, and at each apportionment the rate of the mortuary premiums may be changed to correspond with the actual mortality experience of the Association."

Paragraph IV. These paragraphs are the same
48 except that in "Exhibit B" the *Vice*-President is authorized to sign waiver as well as the President.

Paragraph V. These are the same in both policies.

Paragraph VI. The substance of paragraph VI. of "Exhibit B" (*Ante*, p. 6), is not included in "Exhibit N." Paragraph VI. of "Exhibit N" is the same as paragraph VII. of "Exhibit B" (*Ante*, p. 7).

Paragraph VII. This is the same as paragraph VIII. of "Exhibit B" (*Ante*, p. 7).

Paragraph VIII. This is the same as paragraph IX. of "Exhibit B" (*Ante*, p. 8).

Paragraph IX. This is the same as paragraph X. of "Exhibit B" (*Ante*, p. 8).

Paragraph X. This is the same as paragraph XI. of "Exhibit B" (*Ante*, p. 8).

Paragraph XI. This is the same as paragraph XII. of "Exhibit B" (*Ante*, p. 9).

THIRD PAGE:

The third page of the Gates Certificate, "Exhibit N," differs from the third page of the Howard Certificate, "Exhibit B," in this, that instead of containing a certificate from the Central Trust Company as to the reserve or emergency fund held by it, it contains a printed copy of the trust agreement with the Central Trust Company of New York under which said reserve fund was to be deposited with and held by the Central Trust Company. This also makes it evident that the Gates Certificate, while nominally of later date than the Howard Certificate, in fact antedates it by more than a year, the certificate of the Trust Company on the third page of the Howard Certificate manifestly showing the accumulations or deposits with the Trust Company up to October 18, 1888, of the reserve fund provided for by the deed of trust of October 18, 1882, incorporated in the Gates Certificate as the third page of that certificate and which, as it there appears, is as follows:

"DEED OF TRUST WITH THE CENTRAL TRUST COMPANY OF NEW YORK.

AGREEMENT.

"THIS AGREEMENT, made the *18th day of October*, 1882, between the MUTUAL RESERVE FUND LIFE ASSOCIATION, a Corporation duly organized under the Laws of the State of New York, and located in the City of New York, party of the first part, and THE CENTRAL TRUST COMPANY OF NEW YORK, a corporation duly chartered by said State, and located in said City of New York, as Trustee, party of the second,

52 "WITNESSETH: That, the said party of the first part, desiring to set aside a Reserve Fund for the exclusive benefit of its members, the said party of the second part hereby agrees to receive the same and any future additions thereto, as Trustee, upon the following conditions:

"FIRST. Such rate of interest shall be payable semi-annually by said party of the second part on the current deposits, to the credit of said Reserve Fund, as shall be, from time to time, mutually agreed upon.

"SECOND. Said Trust Company shall, from time to time, upon the written order of the President of
53 said Association, invest said fund, or any portion of it, in such United States Bonds, State, County or City securities, or on such bond and mortgage as shall be designated by the Board of Directors of said Association and approved by the President of said Trust Company. Said securities shall be taken only in the name of said Association, but shall be held by said Trust Company subject to the conditions of this contract, and with Power of Attorney from said Association to collect the interest on the same. Any of such securities shall be sold by said Trust Company, upon the written order of the President of said Association, accompanied by a certified copy of the vote of the Board of Directors of said Association
54 authorizing such sale, and the proceeds shall be deposited to the credit of the Reserve Fund Account with the said party of the second part.

"THIRD. The semi-annual interest on the current deposits and the interests on investments shall, as it matures, be transferred to the credit of the Death Fund Account of the Association in such Bank or Trust Company in New York City as shall be designated by the Board of Directors of said Association, provided, that at the time of the maturing of any such interest the Constitution of the Association does not provide otherwise for its appropriation.

"FOURTH. Upon receipt of a certified copy of a vote of the Board of Directors of said Association, authorizing the transfer of any portion of said Reserve Fund to the Death Fund Account above mentioned, such transfer shall be made by said Trust Company. But in every case the resolution of the Board of Directors authorizing such transfer shall state that such transfer is authorized by sections 3 and 4 of Article XI. of the Constitution of the Association. 55

"FIFTH. If the Board of Directors of said Association shall for any reason deem it to be expedient to order a transfer of the whole or any portion of said Reserve Fund, including the investments, to any State Insurance Department or to any other Trust Company organized under the laws of the State of New York, such transfer shall be made by said party of the second part, provided, that no such transfer shall be made to any Trust Company until the delivery to said party of the second part of a certified copy of the order of the Board of Directors of said Association, authorizing the transfer, and a certified copy of the contract under which the designated Trust Company shall accept the transfer; said contract to be endorsed as approved by one of the Justices of the Supreme Court of the District in which the principal office of said Association shall be located. 56 57

"SIXTH. Said party of the second part shall be allowed a reasonable compensation for making investments of the Reserve Fund and collecting interest on the same, and for realizing on any of the securities of said Fund, and for any authorized expenses of any litigation arising out of this contract, without fault of the party of the second part.

"SEVENTH. In case of a dissolution of the party of the first part, the entire Reserve Fund shall be divided among the then members of the Associa-

58 tion, proportionally to the gross amount of assessments paid by said members respectively to said Association, or shall be distributed in such other equitable manner as the Courts shall direct.

"EIGHTH. The party of the second part is to be answerable only for its own default, malfeasance or negligence in carrying out this agreement.

"IN WITNESS WHEREOF, the party of the first part, and the party of the second part, as Trustee, have hereunto caused to be affixed their respective corporate Seals, and their respective Presidents and Secretaries have hereunto set their hands this 18th
59 day of October, 1882.

MUTUAL RESERVE FUND LIFE ASSOCIATION,
By E. B. HARPER, President.
F. T. BRAMAN, Secretary.
[SEAL.] THE CENTRAL TRUST COMPANY OF NEW YORK,
By H. F. SPAULDING, President.
[SEAL.] CH. P. BABCOCK, Secretary."

FOURTH PAGE:

The fourth page of the Gates certificate, "Exhibit N," as to the printed matter thereon is the same as the fourth page of the Howard certificate, "Exhibit B" (*Ante*, p. 11). The number of the
60 certificate is shown on this page as 60,718, its date as September 7, 1886, its amount $5,000, admission fee $20, and annual dues $10.

EXHIBIT M TO AMENDED BILL; CERTIFICATE OF COMPLAINANT FRANK B. HAMILTON.

This certificate is identical with "Exhibit N," the certificate of complainant Thomas M. Gates, except in the following respects: The number of the certificate, which is for $5,000, is 72,199, the annual dues are $15: the word "duplicate," stamped with a rubber stamp, appears twice upon the first page

of the certificate, and also in like manner upon the fourth or outside page. The following words are written in red ink across the face of the certificate on page one: "This policy is issued in lieu of policy bearing same number which was issued September 6, 1888." Incorporated in the body of the certificate, written in in ink just before the signature clause, are these words: "This policy is issued in lieu of the policy of the same number which was issued May 22, 1888." The date on this page of complainant Hamilton's certificate containing these interlineations and stamp marks is April 30, 1892. 61

The second and third pages of this certificate are identical with the second and third pages of "Exhibit N," as above set forth. The fourth page, as to the printed matter thereon, is likewise identical with "Exhibit N." The fourth page recites the number of the certificate, the name of the member, the date as May 22, 1888; amount, $5,000; admission fee, $20; annual dues, $15. 62

EXHIBIT K: CERTIFICATE OF COMPLAINANT EDWARD C. POOL.

FIRST PAGE:

This certificate, numbered 95,688, calling for the payment of annual dues of $9, is in some particulars materially different from the certificates "Exhibits B, N and M," above summarized. It bears date March 30, 1894, but in the body of it on the first page, written in in ink, appears this clause: "This policy is issued in lieu of policy of the same number which was issued April 22, 1890." 63

SECOND PAGE:

The language of the second page of "Exhibit K" differs from that of "Exhibit B" in the following respects, both as to matter and numerical arrangement:

Paragraph I. Substantially the same as par. IV. of "Exhibit B" (*ante*, p. 5).

64 Paragraph II. Substantially the same as par. XI. of "Exhibit B" (*ante*, p. 8)

Paragraph III. Substantially the same as par. XII of "Exhibit B" (*ante*, p. 9).

Paragraph IV. This is *similar* to par. I. of "Exhibit B" (*Ante*, p. 3), and is as follows:

"IV.—Within thirty days from the first week day of the months of February, April, June, August, October and December of each and every year during the continuance of this Policy there shall be payable to the Association a Mortuary Premium, for such an amount as the Executive Committee of the Association may deem requisite, which amount shall
65 not exceed the maximum rates endorsed hereon, according to the age of each member, and the net amount received to be dealt with as provided in the Constitution or By-Laws of said Association, or as provided under the terms of this Contract."

Paragraph V. Substantially the same as paragraph V. of "Exhibit B" (*ante*, p. 5).

Paragraph VI. This is *similar* to paragraph II. of "Exhibit B" (*ante*, p. 3), and is as follows:

"VI.—Twenty-five per cent. of the net receipts from mortuary premiums paid under this Policy during a period of fifteen years from its date shall
66 be added to the Reserve or Emergency Fund, and deposited with a trust company or companies or other depositories, or deposited with departments constituted by governmental or legal authority; and upon the order of the Board of Directors of the Association shall be invested in United States Bonds, Mortgages; or other interest bearing securities, for the exclusive benefit of the members of the Association, and the interest on the same, as it accrues, shall be placed to the credit of the Death Fund, to be used in providing for the current death claims. The Reserve or Emergency Fund above $100,000 may be applied to the payment of claims in excess of the

Actuaries' Tables of Mortality, or after a Mortuary Premium Call upon each member of the Association has been made, according to the Rules of the Association, to making up any deficiency that may then exist in the Death Fund. The total assets of the Association, including the Reserve or Emergency Fund, and accretions thereon, and also the amount held or deposited in the Death Fund account, and the proceeds from the next Mortuary Call are hereby made liable for the payment of all benefits payable under this Policy, and the insurance hereunder is conditional thereupon." 67

Paragraph VII. This is *similar* to paragaph III. of "Exhibit B" (*ante*, p. 4), and is not material to the present issues in the case at bar. 68

Paragraph VIII. (misprinted as VII. in policy). This is *similar* to paragraph VI. of "Exhibit B" (*ante*, p. 6), and is not material to the present issues.

Paragraph IX. Substantially the same as paragraph IX. of "Exhibit B" (*ante*, p. 8).

Paragraph X. Substantially the same as paragraph VII. of "Exhibit B" (*ante*, p. 7)

Paragraph XI. Substantially the same as paragraph X. of "Exhibit B" (*ante*, p. 8).

Paragraph XII. This is *similar* to paragraph VIII. of "Exhibit B" (*ante*, p. 7), and is not material to the present issues. 69

Paragraph XIII. This clause gives permission to enter the military or naval service of the United States and is not material to the present issues.

THIRD PAGE:

The third page of "Exhibit K" is blank, containing neither a copy of the agreement with the Central Trust Company nor any statement of the amount held by that Company.

70 FOURTH PAGE:

The fourth page, as to the printed matter, is substantially the same as in the previous certificates. The following appears on the cover part of the fourth page: Date, April 22, 1890, Amount $3,000. Admission fee $15. Annual dues $9.

"EXHIBIT A."—CERTIFICATE OF COMPLAINANT THOMAS POLK.

FIRST PAGE:

This certificate was issued June 5, 1891. Its num-
71 ber is 111,478. The first payment was $80 "as admission fee, advance dues and medical fees." It provides for "the payment of $155 40 as a deposit in advance on account of mortuary premiums and dues within thirty days from the first week of the months of October next ensuing, and of the payment as hereinafter provided within thirty days from the first week day of said months in every year during the continuance of this policy of the subsequent mortuary premiums and dues." The amount of the certificate is $10,000. The following clause appears upon the first page of the certificate: "If this policy of insurance shall have been in continuous force for three years from its date, it shall
72 thereafter be incontestable except for fraud, nonpayment of stipulated payments at the times and in the manner herein provided or for misstatement of the age of the member in the application therefor." At the top of the first page in big type appears the words, "TEN YEARS DISTRIBUTION DEPOSIT POLICY OF INSURANCE."

SECOND PAGE:

The language of the second page of "Exhibit A" differs from that of "Exhibit B" in the fol-

lowing respects, both as to matter and numerical 73
arrangement:

Paragraph I. Substantially the same as par. IV. of "Exhibit B" (*ante*, p. 5).

Paragraph II. Substantially the same as par. XI. of "Exhibit B" (*ante*, p. 8).

Paragraph III. Substantially the same as par. XII. of "Exhibit B" (*ante*, p. 9).

Paragraph IV. This is *similar* to par. I. of "Exhibit B" (*ante*, p. 3) and to par. IV. of "Exhibit K" (*ante*, p. 22), and is as follows:

"IV.—Within thirty days from the first week day of the months of February, April, June, August, October and December of each year, after the first 74
payment on account of Mortuary Premiums hereunder shall become due, there shall be due to the Association for payment of Death Claims such an amount as its Executive Committee may assess, as provided in the Constitution or By-Laws (including the amount required for Reserve or Emergency Fund), which amount, together with the Dues at the rate of Three Dollars per annum per $1,000 of insurance hereunder, shall not exceed the maximum rates as per table endorsed hereon, according to the then age of each member. Rates for ages not included in said table shall be based upon the American Experience Table of Mortality. There shall be deducted from the deposits made in advance, on account of Mortuary Premiums and Dues, at the 75
respective succeeding bi-monthly dates above mentioned, such amounts as are then respectively due, and at the end of each respective year from the date when the first deposit is due hereunder, notice will be sent stating the then sum to be advanced on account of Mortuary Premiums and Dues for each ensuing year, and showing the excess, if any, of the last year's deposits on account in meeting the said bi-monthly Assessment for Mortuary Premiums and for Dues. The said sums on account

76 for each new year (less said excess) shall be payable at the same dates as for the first year hereof. In the event of the death of the member all sums paid in advance for the then current year, after deducting all indebtedness, are returnable to the beneficiary."

Paragraph V. This is similar to par. V. of "Exhibit B" (*ante*, p 5); the changes are immaterial to the present issues.

Paragraph VI. This is similar to par. II. of "Exhibit B" (*ante*, p. 3); to par. II. of "Exhibit N" (*ante*, p. 15), and to par. VI. of "Exhibit K" (*ante*, pp. 22, 23), and is as follows:

77 "VI.—Twenty-five per cent of the net receipts, as provided in the Constitution or By Laws, from Mortuary Premiums paid under this Policy shall be added to the Reserve or Emergency Fund, for the exclusive benefit of the members; and the net interest on the same, as it accrues, shall be placed to the credit of the Death Fund, to be used in providing for current death claims. The Reserve or Emergency Fund above $100,000 may be applied to the payment of claims in excess of the American Experience tables of Mortality, or to making up any deficiency that may exist in the Death Fund. The total assets of the Association, including its Reserve
78 or Emergency Fund and accretions thereon, and also the amount held or deposited in the Death Fund account, and the proceeds from the next Mortuary Call are hereby made liable for the payment of all benefits payable under this Policy, and the Insurance hereunder is conditional thereupon."

Paragraph VII. This is a *new* paragraph (but see "Exhibit B", pars. III. and VI. [*ante* pp. 4 and 6] and "Exhibit K", pars. VII. and VIII. [*ante* p. 23]), and is as follows:

"VII.—After this Policy shall have continued in 79
force ten years the Actuary of the Association will annually thereafter, while the same is in force, determine and credit thereto the equitable proportion to which this Policy is entitled from its contribution to the Reserve or Emergency Fund for the tenth respective year prior to said credit (including an equitable proportion of the contribution of those of the same class whose policies have terminated); which amounts so determined and credited may be used toward payment of future dues and Mortuary Premiums. In case of the death of the member the sum apportioned and standing to the credit of this Policy, as determined by said Actuary, in the Reserve or Emergency Fund shall be paid to the 80
beneficiary, in addition to the amount hereby insured."

Paragraph VIII. This is also a *new* paragraph (but see "Exhibit B," pars. III. and VI., [*ante*, pp. 4 and 6] and "Exhibit K," pars. VII. and VIII, [*ante*, p. 23]), and is as follows:

"VIII.—Provided this Policy shall have been in continuous force for the period of fifteen years from its date, then, in that event, provided the member shall notify said Association in writing at least one year before the expiration of said fifteen years, that he desires to surrender this Policy and to have paid him 81
in cash the equitable share of the surplus Reserve or Emergency Fund accumulations in which this Policy is entitled to participate; then, after receipt of such written notice, as aforesaid, the Actuary of said Association will determine and credit to said member, upon the books of the Association, the equitable proportion to which this Policy is entitled by its contributions to the Reserve or Emergency
d, including the then equitable share of such Reserve or Emergency Fund accumulations contributed thereto by members otherwise participat-

82 ing, whose Policies have terminated by death, expiry and lapse, and after deducting any sums that may have been used or paid as per Section VII. of this Policy, the remainder, so determined by said Actuary as aforesaid, and standing to the credit of such member upon the books of the Association, shall at the expiration of said fifteen (15) years be paid in cash to said member, and this Policy shall thereupon become null and void and be surrendered to said Association."

Paragraphs IX. and X. relate to risks not assumed and permission to enter military or naval service, and are not material to present issues.

83 Paragraph XI. Substantially the same as par. VII. of "Exhibit B" (*ante*, p. 7).

Paragraph XII. Substantially the same as par. X. of "Exhibit B" (*ante*, p. 8).

Paragraph XIII. This is *new*, and is as follows:

"XIII.—If this Policy of Insurance shall have been in continuous force for three years from its date, it shall thereafter be incontestable except for fraud, non-payment of stipulated payments at the times and in the manner herein provided, or for misstatement of the age of the member in the application therefor, subject to the provisions hereunder."

84

THIRD PAGE:

The third page of this certificate, "Exhibit A," is blank.

FOURTH PAGE:

The fourth page of this certificate, "Exhibit A," does not differ materially from the fourth page in the other exhibits above referred to, except that the following table appears on the fourth page in lieu

of the tables on the fourth page of the certificates previously summarized: 85

"MAXIMUM BASIS OF MORTUARY PREMIUMS PER $1,000 OF INSURANCE,

(Including Dues at the Rate of $3 per $1,000 Insurance.)

"Should the mortality of the Association in any year require an amount in excess of the sum provided for by these rates, together with the amount in the Death Fund and interest derived from the Reserve or Emergency Fund, such excess shall be paid from the Reserve or Emergency Fund." 86

Age.	Mortuary Premiums, including Reserve or Emergency Fund and Dues.			Age.	Mortuary Premiums, including Reserve or Emergency Fund and Dues.		
	Bi-monthly.	Semi-annual.	Annual.		Bi-monthly.	Semi-annual.	Annual.
25	$2.30	$6.90	$13.60	43	$2.87	$8.61	$17.03
26	2.31	6.93	13.86	44	2.93	8.79	17.58
27	2.32	6.96	13.92	45	2.99	8.97	17.94
28	2.34	7.02	14.04	46	3.07	9.21	18.42
29	2.36	7.08	14.16	47	3.17	9.51	19.02
30	2.37	7.11	14.22	48	3.28	9.84	19.68
31	2.39	7.17	14.34	49	3.41	10.23	20.46
32	2.41	7.23	14.46	50	3.56	10.68	21.36
33	2.44	7.32	14.64	51	3.91	11.73	23.46
34	2.46	7.38	14.76	52	4.29	12.84	25.68
35	2.49	7.47	14.94	53	4.68	13.98	27.96
36	2.52	7.56	15.12	54	5.08	15.09	30.18
37	2.55	7.65	15.30	55	5.41	16.23	32.46
38	2.59	7.77	15.54	56	5.78	17.34	34.68	87
39	2.63	7.89	15.78	57	6.16	18.48	36.96
40	2.70	8.10	16.20	58	6.58	19.59	39.18
41	2.75	8.25	16.50	59	6.91	20.73	41.46
42	2.81	8.43	16.86	60	7.28	21.84	43.68

The above rate includes Mortuary Premium Reserve or Emergency Fund and three dollars for dues.

Members will not be liable for Mortuary Calls made within three months from date of Policy."

88 "EXHIBIT D" TO AMENDED BILL: CERTIFICATE OF COMPLAINANT J. L. LONG:

The certificate of complainant J. L. Long, "Exhibit D," appears, except as to dates and amounts, to be a duplicate in all respects of the certificate of complainant Polk, "Exhibit A."

The date of the Long certificate is February 16, 1891; amount, $4,000; first payment, $32.00; semi-annual payments provided for in the body of the certificate payable the first week day of June and December of $29.88.

"EXHIBITS C, F AND J TO AMENDED BILL: CERTIFI-
89 CATES OF COMPLAINANTS MOODY, BOSHWITZ AND SNODGRASS.

"Exhibits C, F and J," being the certificates respectively of complainants Moody, Boshwitz and Snodgrass, are substantially the same in all respects, except as to dates of issue, amounts, etc., as the certificate of complainant Polk, "Exhibit A" and need not be further summarized.

EXHIBIT H: CERTIFICATE OF COMPLAINANT WILLIAM H. FOOTE. EXHIBIT L: CERTIFICATE OF COMPLAINANT THOMAS J. DUPREE. EXHIBIT E: CERTIFICATE OF COMPLAINANT SIMEON MARSH.

90 "Exhibit H" to amended bill, certificate of complainant William H. Foote, "Exhibit L" to amended bill, certificate of complainant Thomas J. Dupree, and "Exhibit E" to amended bill, certificate of complainant Simeon Marsh, issued respectively October 8, 1894, January 17, 1895, and January 7, 1896, differ in numerous respects, some of which are material and important, from the prior certificates, although each of the last three named certificates purports to be a "Ten Years' Distribution Deposit Policy".

EXHIBIT H: CERTIFICATE OF COMPLAINANT FOOTE. 91

FIRST PAGE:

"Exhibit H", the certificate of complainant Foote, after accepting complainant as a member in substantially the usual form, provides that this is "upon the condition of the payment of Thirty Dollars and eighteen cents as a deposit in advance on account of mortuary premiums and dues within thirty days from the first week day of the months of February and August next ensuing and of the payment, as hereinafter provided, within thirty days on the first week day in said months in every year during the continuance of this policy, of the subsequent mortuary premiums and dues." Here follows the name of the beneficiary and the amount of the insurance, $5,000. 92

There are like provisions upon the first pages of Exhibits L and E, being the certificates of complainants Dupree and Marsh.

SECOND PAGE:

The second page of each of the three certificates, Exhibits "H", "L" and "E" seems to be identical, and the language thereof differs from that of "Exhibit B" in the following respects:

Paragraph I. Substantially the same as par. IV. of "Exhibit B" (*ante*, p. 5). 93

Paragraph II. Substantially the same as par. XI. of "Exhibit B" (*ante*, p. 8).

Paragraph III. Substantially the same as par. XII. of "Exhibit B" (*ante*, p. 9).

Paragraph IV. Same as par. IV. of "Exhibit A" (*ante*, pp. 25, 26).

Paragraph V. Substantially the same as par. V. of "Exhibit B" (*ante*, p. 5.)

Paragraph VI. Same as par. VI. of "Exhibit A" (*ante*, p. 26).

94 Paragraph VII. This is the same as par. VII. of "Exhibit A" (*ante*, p. 27), with clause in brackets added, and is as follows:

VII.—After this Policy shall have continued in force ten years the Actuary of the Association will annually thereafter, while the same is in force, determine and credit thereto the equitable proportion to which this Policy is entitled [exclusive of said $100,000] from its contribution to the Reserve or Emergency Fund for the tenth respective year prior to said credit (including an equitable proportion of the contribution of those of the same class whose policies have terminated); which amounts so deter-
95 mined and credited may be used toward payment of future dues and Mortuary Premiums. In case of the death of the member the sum apportioned and standing to the credit of this Policy, as determined by said Actuary, in the Reserve or Emergency Fund shall be paid to the beneficiary, in addition to the amount hereby insured."

Paragraph VIII. This is the same as par. VIII. of "Exhibit A" (*ante*, p. 27, 28), with clause in brackets added, and is as follows:

"VIII.—Provided this Policy shall have been in continuous force for the period of fifteen years from
96 its date, then, in that event, provided the member shall notify said Association in writing at least one year before the expiration of said fifteen years, that he desires to surrender this Policy and to have paid him in cash the equitable share of the surplus Reserve or Emergency Fund accumulations in which this Policy is entitled to participate; then, after receipt of such written notice, as aforesaid, the Actuary of said Association will determine and credit to said member, upon the books of the Association, the equitable proportion to which this Policy is en-

titled [exclusive of said $100,000] by its contribu- 97
tions to the Reserve or Emergency Fund, including the then equitable share of such Reserve or Emergency Fund accumulations contributed thereto by members otherwise participating, whose Policies have terminated by death, expiry and lapse, and after deducting any sums that may have been used or paid as per Section VII of this Policy, the remainder, so determined by said Actuary as aforesaid, and standing to the credit of such member upon the books of the Association, shall at the expiration of said fifteen (15) years be paid in cash to said member, and this Policy shall thereupon become null and void, and be surrendered to said Association."
98

Paragraphs IX. and X. relate to risks not assumed and permission to enter military or naval service, and are not material to present issues.

Paragraph XI. Substantially the same as par. VII. of "Exhibit B" (*ante*, p. 7).

Paragraph XII. Substantially the same as par. X. of "Exhibit B" (*ante*, p. 8).

Paragraph XIII. This is *similar* to par. VIII. of "Exhibit B," and is not material to present issues.

Paragraph XIV. This is the same as par. XIII., of "Exhibit A" (*ante*, p. 28).

99

THIRD PAGE:

The third page in each of said certificates: "Exhibits H, L and E" is a certificate from the Central Trust Company of New York, by F. P. Olcott, its President, containing a "Statement of the Reserve or Emergency Fund" of the Mutual Reserve Fund Life Association. The only substantial difference between these statements is as to the dates and

100 amounts, and the latest statement, as the same appears in " Exhibit E," is as follows:

" CERTIFICATE FROM THE CENTRAL TRUST COMPANY OF NEW YORK.

F. P. Olcott, President.

Statement of the Reserve or Emergency Fund.

Mutual Reserve Fund Life Association,

(Incorporated)

New York City.

As Certified by Auditors January 18, 1895.

101 Total amount of the Reserve or Emergency Fund, $3,827,635.12.

Held and invested as follows:

Bonds secured by First Mortgages upon Real Estate in the City of New York, held by the Central Trust Co. of New York, Trustee ...	$2,141,400 00
Bonds and Mortgages deposited with Insurance Department, State of New York	200,000 00
Real Estate Account..	449,143 74
102 English Consols on deposit with Court of Chancery of England for the Insurance Department of England.	97,500 00
Bonds of Province of Quebec, deposited with Receiver General of Canada...	50,000 00
Bonds of Dominion of Canada deposited with Receiver General of Canada	52,325 57

Bonds of Credit Foncier, Registered, deposited with Credit Foncier, Paris, France....	$19,692 18	103
French Rentes, Registered, deposited with Credit Foncier, and Comptoir National d'Escompte de Paris, France	30,183 77	
Italian Government Consol Bonds, on deposit with Kingdom of Italy.....	6,486 85	
Bond City of St. Louis, deposited with Insurance Department, State of Missouri.....	1,000 00	104
*Cash on deposit with Chemical National Bank of New York.....	80,000 00	
*Cash on deposit with First National Bank of New York.....	100,000 00	
*Cash on deposit with National Park Bank of New York.....	52,859 75	
*Cash on deposit with Merchants' Exchange National Bank of New York	50,000 00	105
*Cash on deposit with National Broadway Bank of New York.....	40,000 00	
*Cash on deposit with Franklin National Bank of New York.....	20,000 00	

*Special Emergency Fund.

106	*Cash on deposit with National Provincial Bank, London, England	$74,621 23
	*Cash on deposit with Comptoir National d'Escompte de Paris, Paris, France.....	32,084 11
	*Cash on deposit with Credit Lyonnais, Paris, France.....	9,245 54
	*Cash on deposit with Den Norske Credit Bank, Christiana, Norway	215 04
107	*Cash on deposit with Banca d'Italia, Rome, Italy.....	9,290 46
	*Cash on deposit with Stockholms Enskilda Bank, Stockholm, Sweden.....	8,780 03
	*Cash on deposit with Privatbanken i Kjobenhaven, Copenhagen, Denmark.....	372 53
	*Cash on deposit with Morgan, Harjes & Co., Paris, France.	22,531 31
108	Cash on deposit with Garfield National Bank of New York, on account of Special Reserve or Emergency Building and Investment Fund...	10,415 95
	Cash on deposit with Credit Foncier, Paris, France	44,439 92

*Special Emergency Fund.

Cash on deposit with Credit Lyonnais, Paris, France	$20,000 00		109
Cash on deposit with Stockholms Enskilda Bank, Stockholm, Sweden.....	19,577 57		
Cash on deposit with the Central Trust Co. of New York, Trustee.....	146,076 51		
Cash on deposit with Merchants' Exchange National Bank of New York.....	20,000 00		
Cash on deposit with Third National Bank of Boston, Mass	10,869 90		110
Cash on deposit with First National Bank, Milwaukee, Wis	3,523 15		
Cash on deposit with Washington Loan & Trust Co., Washington, D. C.....	5,000 00		
Total		$3,827,635 12	

This is to certify that the Central Trust Company of New York held on the thirty-first day of December, 1894, under the agreement by and between the Mutual Reserve Fund Life Association and this Company, as Trustee, dated October 18, 1882, Two Million, Two Hundred and Eighty-seven Thousand Four Hundred and Seventy-six Dollars and Fifty- 111

112 one Cents ($2,287,476.51) of the above stated Reserve or Emergency Fund, as follows:

In Bonds secured by First Mortgage upon well improved Real Estate in the City of New York, and not exceeding 60 per cent. of a conservative appraised cash value of said Real Estate	$2,141,400 00	
In Cash deposited with us	146,076 51	
113 Total amount held by the Central Trust Co. of New York, Trustee		$2,287,476 51

CENTRAL TRUST CO. OF NEW YORK,
By
F. P. OLCOTT,
President.

Dated, New York, December 31, 1894."

FOURTH PAGE:

The fourth pages of "Exhibits H, L and E" are in substance as to all printed portions the same as
114 the fourth pages of the exhibits previously copied herein and need not be repeated.

APPLICATIONS:

"Exhibits H and L," the certificates of complainants Foote and Dupree, have the application blank, with the questions to and answers of the applicant, the medical examiner's certificate, &c., attached to them as a part of the same paper upon which the certificate consisting of four pages is printed. These ap-

plications are not separate or detached papers upon these two exhibits, but are a part of the paper upon which the certificate is printed. The application blanks form virtually a folder leaf or additional leaf to the certificates. The blank forms on each of these certificates seem to be identical. Of course, the answers, signatures, &c., written in in ink are different. It will be sufficient to copy the application from "Exhibit H," which (omitting immaterial parts, as noted), is as follows: 115

PART 1.—APPLICATION FOR MEMBERSHIP AND POLICY OF INSURANCE

IN THE 116

MUTUAL RESERVE FUND LIFE ASSOCIATION

OF THE CITY OF NEW YORK,

Incorporated.

APPLICATION FOR FREE POLICY—NO RESTRICTION AS TO TRAVEL, OCCUPATION OR RESIDENCE.

Conditions upon which this application is made are that no personal liability of the applicant shall be incurred by becoming a member of this Association. Payments by the member are voluntary at the option of the member to continue only so long as the member may desire to keep the said certificate or policy in force. 117

I, WILLIAM HENRY FOOTE residing at *near*—WHITEVILLE Note. Insert the name in full. Use ink. County of *Fayette* and State of *Tenn.* do hereby make application to the MUTUAL RESERVE FUND LIFE ASSOCIATION for Membership and a Policy of Insurance upon my life, and as a consideration therefor I warrant the statements and

answers as written in said application to be full, complete and true."

[Here follow the usual personal questions and answers as to the applicant's "life history."]

"IT IS HEREBY AGREED that the answers and statements in this application (Parts 1 and 2) whether written by the applicant or not, are warranted to be full, complete and true, and that this agreement and the Constitution or By-Laws of the Association, with the amendments thereto, together with this application, are hereby made part of any Policy that may be issued hereon. That if any of the answers or statements made are not full, complete and true, or if any condition or agreement shall not be fulfilled as required herein or by such Policy, then the Policy issued hereon shall be null and void, and all money paid thereon shall be forfeited to said Association. That the person soliciting or taking this application, and also the Medical Examiner, shall be Agents of the applicant as to all statements and answers in this Application, and no statements or answers made or receivd by any person, or to the Association, shall be binding on the Association, unless such statements or answers be reduced to writing and contained in this Application. And the applicant hereby expressly waives all provisions of law now existing or that may hereafter exist, preventing any physician from disclosing any information acquired in a professional capacity or otherwise, or rendering him incompetent as a witness in any way whatever, and for himself and for any person accepting or acquiring any interest in such Policy, authorizes and requests any such physician to testify concerning the health and physical condition of the applicant That under no circumstances shall the insurance hereby applied for be in force until payment in cash of the First Payment, including medical fees, while

the applicant is in good health, and delivery of the 121
Policy to the Applicant in person, during his life-
time and while in good health. The applicant fur-
ther agrees not to use alcoholic or malt liquors to
excess, or habitually use opium, hydrate of chloral,
or other narcotics (tobacco excepted). The appli-
cant also agrees that the affidavit or deposition of
the Secretary or other officer of the Association,
that notice of a Mortuary Premium or Dues, or
other notice whatsoever, had been addressed and
mailed to the applicant or other person designated
by him, at the last post-office address appearing
upon the books of the Association, according to the
usual course of business of said Association, shall be
admitted as evidence, and deemed and constitute 122
conclusive proof of due notice to every person ac-
quiring any interest under said Policy.

{ Signature of Applicant in full. } W. H. FOOTE.

{ Full name of Beneficiary. } M. A. FOOTE.

The Applicant may sign for the Beneficiary.

This risk is recommended by me as a good risk, I am a witness to the signatures, which I certify to be genuine, and the answers herein, and all of them are true to the best of my knowledge and information.

Dated at *Whiteville, Tenn , Sept. 25*, 1894. 123

ROSS WITHERSPOON, Solicitor.

Solicitor's P. O. Address *Jackson, Tenn.*"

[Here follow the questions usually propounded to applicants as to physical condition.]

"I do hereby warrant, that the foregoing answers, written, to the above questions, are my answers and are full, complete, correct, and true, and the same shall be made a part of the contract of my Certificate of Membership, or Policy of Insurance, in the MUTUAL RESERVE FUND LIFE ASSOCIATION,

and that I am the person who signed the application on the reverse side of this application, and was examined as below; and should this application be accepted and my membership thereunder consummated, I do thereupon execute and deliver this power of attorney and proxy, and constitute and appoint Edward B. Harper, of New York, State of New York, and his brother Franklin H. Harper, severally and not jointly, or the latter's representative thereunto duly authorized, or in the event of his or their death, the Executive Committee of said Association, or a majority thereof, my sole, true and lawful Attorney and Agent, for me and in my name, place and stead, to vote as my Agent, Attorney or proxy, according to the number of votes I would be entitled to cast, if personally present, at the next and also at each and every General, Annual or Special Meeting of the "Mutual Reserve Fund Life Association" of New York, or the Subscribers or Members thereof, for the election of Directors, or for any other election or purpose whatever.

This power of attorney and proxy shall be valid and effectual, and shall continue in full force for the period of ten years from the date hereof, or until at least thirty days after a notice in writing, expressly revoking or suspending the same shall have been delivered to the Secretary of the Association, and a like notice to the Attorney and Proxy hereby appointed. This proxy shall not be operative at any meeting of the Association at which the undersigned is present in person.

{ Signature of } { Applicant. }

W. H. FOOTE (SEAL.)"

Signature of Medical Examiner as Witness.

A. RHEA, M. D.

[Here follow the usual questions to and answers by the "Medical Examiner."]

The use of this application blank, printed as a part of the same paper upon which certificates of membership and policies were printed and issued, seems to have been discontinued by the Association before the certificate "Exhibit E" to complainant Simeon Marsh was issued, as no such printed application formed a part of that certificate or is attached thereto, the application by complainant Marsh under which "Exhibit E" was issued seeming to have been made on a separate paper, while the application forms in "Exhibits H and L" are not themselves originals, but contain only copies of the applications submitted to the Association. There is nothing of the kind forming a part of "Exhibit E" which was issued on January 7, 1896, as of date December 31, 1895, as appears from the date line upon the back of the certificate. 127 128

EXHIBIT G: CERTIFICATE OF COMPLAINANT HASTINGS.

"Exhibit G" is an "ordinary participating policy of Insurance, Northwestern Life Assurance Company, Chicago, Illinois, issued to Theodore J. Hastings, Memphis, Tennessee." This exhibit, which we copy in full, except the cover page, the substance of which is above quoted, reads as follows:

"INCORPORATED UNDER THE LAWS OF THE STATE OF ILLINOIS, JUNE, 1874. 129

Number 155,141. Amount $2,500.00.
Age 33. Annual Premium $64.10.

NORTHWESTERN LIFE ASSURANCE COMPANY.

CHICAGO, ILL.

HEREBY PROMISES TO PAY Two Thousand Five Hundred Dollars, within sixty (60) days after re-

ceipt and acceptance of due proof of the fact and cause of the death of Theodore J. Hastings of Memphis, State of Tennessee, the Insured, provided this Policy is then in force, to his wife, Anna L. Hastings, if living; otherwise to the Insured's executors, administrators or assigns.

THIS INSURANCE is hereby granted in consideration of the application originally made to the COVENANT MUTUAL LIFE ASSOCIATION OF ILLINOIS, which is hereby made a part of this contract, and of the surrender of Policy or Certificate No. 11,498, issued by said Association, and of the payment in advance of the sum of Sixty-Four Dollars and Ten cents, being the first annual premium on this Policy (the first year's premium being for preliminary term insurance), and of the payment in advance of Sixty Four Dollars and Ten cents on or before twelve o'clock noon on the Ninth day of February of each year during the continuance of this Policy.

FAILURE TO PAY any renewal premium or other indebtedness when due, will render this Policy null and void, and all payments theretofore made hereunder will be forfeited to the Company, except that the Insured shall be entitled to one of the following Privileges (age of the Policy to be computed from the Register Date hereof):

(The following table gives the calculated Paid-up, Extension and Loan or Cash Values, provided for by this Policy and subject to the conditions on the back hereof.)

TABLE OF PRIVILEGES.

AT END OF	FIRST	SECOND		THIRD	AT END OF	FIRST	SECOND		THIRD
	Without any action of the Insured, the value of this Policy, in full-paid Life Insurance, payable at death, shall be as follows:	Upon written application at the office of the Company on or before the date on which premium falls due, the insurance for the full face of this Policy will be extended for		Loan or Cash Privileges referred to on the back of this Policy.		Without any action of the Insured, the value of this Policy, in full-paid Life Insurance, payable at death, shall be as follows:	Upon written application at the office of the Company on or before the date on which premium falls due, the insurance for the full face of this Policy will be extended for		Loan or Cash Privileges referred to on the back of this Policy
		YEARS	MONTHS				YEARS	MONTHS	
3 years	$			$	19 years	$1,272 50			$661 48
4 "					20 "	1,327 50	15	5	704 10
5 "					21 "	1,377 50			747 23
6 "					22 "	1,432 50			790 78
7 "					23 "	1,482 50			834 75
8 "					24 "	1,530 00			879 05
9 "					25 "	1,575 00	15	3	923 73
10 "					26 "	1,620 00			968 68
11 "					27 "	1,682 50			1,013 85
12 "					28 "	1,705 00			1,059 10
13 "					29 "	1,745 00			1,104 35
14 "					30 "	1,785 00	14	3	1,149 50
15 "					35 "	1,952 50	12	11	1,370 85
16 "					40 "	2,085 00	11	4	1,578 28
17 "									
18 "									

45

73

136 (Values for Extended Insurance for intermediate years are proportionate to above and will be furnished on application.)

THIS POLICY is subject to all the Provisions and requirements printed or written on the back hereof as fully as though recited at length over the signatures heroto affixed.

In witness whereof, the said Northwestern Life Assurance Company has caused its Corporate Seal to be hereto affixed and these presents to be subscribed to by its President and Secretary, at Chicago, Illinois, this Fourteenth day of April, A. D., 1900.

C. E. MALLIE,
137 President.

A. C. STEVENS,
Asst. Secretary.

[SEAL.]

ORDINARY LIFE REGISTER DATE OF THIS POLICY, February 9, 1882.

This Policy being issued in lieu of a Policy of same amount now in force, Revenve Stamps are not required hereon.

PROVISIONS AND REQUIREMENTS.

1. Upon satisfactory assignment or pledge of this policy to the Company as collateral security, and
138 upon application at the Chicago office within the month of grace allowed for the payment of the premium, after third or any subsequent anniversary of the Register Date of this policy (provided premiums shall have been paid in full to the time application for a loan is made, including the premium for the entire insurance year then be ginning), the Company will loan the amount calculated in the Table of Loan or Cash Privileges on the face of this policy.

2. Upon written application at the office of the Company in Chicago, Illinois, thirty days prior to

the completion of the fifth or any subsequent anni- 139
versary of the Register Date of this policy, and upon legal surrender of this policy after lapse for non-payment of premiums, the Insured may avail himself of the calculated Cash Privilege, as provided on the face of this policy.

3. The premium on this policy is computed upon the Actuaries' Table of Mortality and 4 per cent. interest, and the reserve according to said standard shall be maintained either from premiums paid by the Insured or a lien upon this policy, for which purpose the mortality element of the premium hereon may be varied according to the mortality experience of the Company. The privileges of Paid-up and 140
Extended Insurance, Loan or Cash Surrender Values, and the dividends provided for by this policy, are available only when the reserve funds of the Company are in excess of the amount required by law, and not less than $100,000. An individual account shall be kept with this policy, crediting the premiums received hereon and the interest on net balances at the net rate currently realized by the Company on its mean assets, and charging the policy's share of losses and expenses.

4. The Board of Trustees shall annually declare dividends out of any surplus arising under this policy. 141

5. The Insured under this policy shall be subject to no restrictions as to residence, travel or occupation.

6. All premiums are due and payable at the office of the Company in the City of Chicago, Illinois; but, at the pleasure of the Company, suitable persons may be authorized to receive such payments at other places, on or before the dates due; but only on the production of the Company's receipt therefor,

142 signed by the President or Secretary and countersigned by the authorized person to whom payment is made. Although this contract is based on the receipt of premiums annually in advance, the premiums may be paid in semi-annual installments of Thirty-three and 33-100 Dollars, or quarterly installments of Sixteen and 98-100 Dollars in advance. It is understood that the payment of a semi-annual installment of the annual premium hereunder shall not continue the policy in force longer than six months, nor a quarterly installment longer than three months. Notification of premiums becoming due are regularly sent to the Insured, but without any agreement on the part of
143 the Company to do so, and without any responsibility for their omission or miscarriage.

7. A grace of thirty days will be allowed in the payment of premiums hereafter due on this policy, provided always, that whenever advantage is taken of this grace, interest at the rate of six per cent. per annum shall be paid to the Company for the time deferred.

8. It is expressly understood that the Insured under this policy may, with the consent of the Company, change the beneficiary or beneficiaries at any time during the continuance of this policy (provided
144 same has not been previously assigned) by filing with the Company a written request, accompanied by this policy; such change to take effect upon the endorsement of the same on the policy by the Company.

9. Any assignment of this policy must be made in duplicate, and both copies sent to the Chicago office for acknowledgment, one of them to be retained by the Company. The Company will not assume responsibility for the validity of an assignment.

10. This policy will be reinstated upon written application therefor within one year after non-payment of any premium, subject to evidence of good health satisfactory to the Company and payment of all delinquent premiums, with interest at the rate of six per cent. per annum. 145

11. In case this policy is continued under extended insurance, and death occurs during the extended period, there shall be deducted from the amount insured a sum equal to the regular annual premiums, with interest at six per cent. which would have been paid had the policy been continued in force on its original plan. No part, however, of such term insurance shall be due or payable unless satisfactory proofs of death be furnished within one year after death. 146

12. No suit or action hereon shall be maintained unless actually begun within one year from the day of the death of the Insured, without reference to the time of furnishing the proofs of death. If any suit in law or equity be commenced after such period of one year, the lapse of time shall be a conclusive bar to any recovery hereon, any statute to the contrary notwithstanding.

13. Any part of the year's premium remaining unpaid together with any other indebtedness of the Insured or beneficiary to this Company, shall be deducted upon extension or surrender of this policy, or from the amount payable in the event of death, or in any settlement hereunder. 147

14. All agreements made by this Company are signed by the President or Secretary. This power will not be delegated. No other person can alter or waive any of the conditions of this policy, or issue

148 permits of any kind, or make an agreement binding upon said Company.

RIDER: Attached to this policy of insurance in the Northwestern Life Assurance Company issued to the complainant Hastings, is a rider issued by the defendant Mutual Reserve Fund Life Association under date of September 1, 1900, and reading as follows:

ATTACH THIS RIDER

TO THE POLICY ISSUED TO YOU BY THE NORTHWESTERN LIFE ASSURANCE COMPANY.

149 NEW YORK, September 1, 1900.

To THEODORE J. HASTINGS of Memphis, Tenn., holder of Policy No. 155141.

THIS IS TO CERTIFY, That at a meeting of the members of the NORTHWESTERN LIFE ASSURANCE COMPANY, held on the 1st day of September, 1900, at Chicago, Illinois, all living members of said Company in good standing, as shown by the books of said Company upon said day, were transferred to the MUTUAL RESERVE FUND LIFE ASSOCIATION, of New York. Said Association accepts into membership as of that date (September 1st, 1900) all such living members, transferred as provided in said
150 Contract of Transfer, and will carry out the policy contract of each of such members, in the manner provided in and subject to the terms and conditions of said Contract of Transfer, so long as said member shall on his part pay his premiums, comply with all the terms of said Contract of Transfer, of the above numbered policy, of the Constitution and By-Laws of said Association, as they now exist or may hereafter be amended, and the Laws of the State of New York, it being expressly understood and provided that the terms of said Contract of Transfer shall at all times measure and determine the extent

of the obligation assumed by said Association under each policy. 151

MUTUAL RESERVE FUND LIFE ASSOCIATION.
FREDERICK A. BURNHAM,
President.

Attest:
CHAS. E. CAMP,
Secretary.

N. B.—Contract of Transfer makes no change in the Premium Rate required or Amount of Lien under your Policy, numbered as above, issued by the Northwestern Life Assurance Company." 152

Supreme Court of the United States.

THOMAS POLK *et al.*,
Petitioners,

against

MUTUAL RESERVE FUND LIFE ASSOCIATION,
Respondent.

Southern District of New York, ss.:

FRANK H. PLATT, being duly sworn, deposes and says:

Deponent is counsel for the respondent.

Certain constitutional questions is this case were certified to this Court by the Circuit Court of Appeals for the Second Circuit some eighteen months ago and are No. 45 on the present calendar of this Court, as deponent is informed. The remaining questions in the case decided by the Circuit Court for the Southern District of New York are chiefly questions of pleading, and, in deponent's opinion, involve no novel, important or interesting question of law.

If this Court should grant the petition for a certification of the entire case to this Court, it would be impossible to prepare the briefs upon

all the questions involved in season for argument thereof at the same time with the constitutional questions already certified, as the latter questions will in the ordinary course be reached for argument within a few days.

The appellants' brief in the Circuit Court of Appeals contained 139 pages, and an appendix of 51 pages. The appellants filed also a supplemental brief of 22 pages. The brief for the appellees contained 108 pages.

The motion, petition and brief in this proceeding were served upon deponent on the afternoon of Saturday, October 12, the motion being returnable on Tuesday, October 15, and the time afforded for the preparation of answering papers has been insufficient for a comprehensive discussion of the case. A short brief has been prepared, however, stating generally the questions involved, and is submitted herewith for the assistance of the Court.

FRANK H. PLATT.

Sworn to before me this 14th day of October, 1907.

HENRY W. CLARK,
Notary Public,
New York County.

SUPREME COURT OF THE UNITED STATES.

THOMAS POLK *et al.*,
Petitioners,

against

MUTUAL RESERVE FUND LIFE ASSOCIATION,
Respondent.

BRIEF FOR RESPONDENT ON MOTION FOR WRIT OF CERTIORARI.

The petition for a writ of certiorari seems to be based upon two grounds: first, that the changes which have taken place in the membership of the Circuit Court of Appeals for the Second Circuit since the argument of this case will necessitate a reargument before that Court as now constituted; second, that the questions of law involved are so "novel, important and interesting" that they ought to be decided by this Court.

The Circuit Court of Appeals for the Second Circuit has already certified to this Court certain constitutional questions, not because those questions were difficult or extraordinary, but because that Court has consistently adhered to the principle that it has no jurisdiction to decide questions arising under the Constitution of the United States. If the Court below had felt any diffidence as to its ability to decide the remaining questions in the

case, it could have certified those questions to this Court as well as the constitutional questions. The fact that the case must be reargued would seem to constitute no reason why the reargument of all the questions should be before this Court instead of the Court of Appeals unless the questions are of such a character that they demand consideration by this Court. The second ground suggested by the petition as the basis for this motion is, therefore, the only one requiring attention.

As the statement contained in the petition of the questions involved is more rhetorical than exact, an exact statement of the questions may assist the Court in the decision of this application. Time is not afforded to analyze in detail the petitioners' statement of the questions involved or the allegations of the bill of complaint. Most of the propositions asserted by the petitioners to be the questions at issue are not presented by the bill of complaint. The bill of complaint is voluminous, but the court of original jurisdiction experienced considerable difficulty in separating the allegations of fact from the conclusions of law with which the complaint abounds. After a demurrer to the original bill was sustained (119 Fed., 491), and the amended bill of complaint expurgated of its scandal and impertinence (Record below, p. 173; 128 Fed., 524), the Circuit Court was unable to discover sufficient allegations of fact to constitute a cause of action (Record below, p. 249; 137 Fed., 273).

Upon analysis the bill of complaint will be found to be an attempt by policyholders to secure an accounting and a receivership of an insurance company upon two grounds: First: That

the corporation is insolvent; Second: That an amendment of the certificate of incorporation under Chapter 722 of the Laws of 1901 of the State of New York permitting the company to issue policies on the level premium plan violated the complainants' contracts. As to the first proposition, the Circuit Court held that notwithstanding the numerous charges of insolvency in the bill, the bill itself contained other allegations which showed that the company was not insolvent. The allegations of insolvency are in fact only conclusions based upon the theory that the amendment of the charter resulted in a new corporation, to which the assets of the original corporation were transferred, thus leaving the original corporation insolvent. But the statute of the State of New York under which the amendment was effected does not authorize the creation of a new corporation, and no new or distinct corporation was organized. It is difficult to see wherein this question presents any "novel, important and interesting" feature which requires the consideration of this Court. As to the second proposition—the complaint does not show that any change in the complainants' contracts was attempted; the question is simply whether policyholders of a mutual assessment insurance company have a vested or contract right to the continuance of the original plan and method of business unchanged—a right to prohibit the company from writing its new business on the level premium plan. This question has been decided by this Court in *Wright vs. Minnesota Mutual Life Ins. Co.*, 193 U. S., 657. This latter question is the question which has been already certi-

fied to this Court in the present case in various forms.

The assignment of errors on the petitioners' appeal from the Circuit Court to the Circuit Court of Appeals (Record below, pp. 264 to 276), is the true criterion of the questions involved. The *first, second, fourth, fifth, sixth* and *fifteenth* errors assigned are too general in form to raise any question whatever. The *third, seventh, eleventh* and *thirteenth* errors assigned present propositions which the Circuit Court did not decide. The *eighth* and *ninth* errors assigned present the question of the sufficiency of the allegations of insolvency. The *tenth* and *twelfth* errors assigned perhaps present the question of the right of the company to amend its charter without the consent of the policyholders, being the question already certified to this Court. The *fourteenth* error assigned relates only to the sufficiency of pleading certain charges of fraud on the part of the respondents' officers. Then follow errors assigned numbered from *sixteen* to *thirty-five* inclusive, which challenge the rulings of the Circuit Court in striking out various allegations as scandalous and impertinent. An examination of these rulings as to scandal and impertinence will hardly convince the Court that any "novel, important or interesting" question is presented thereby.

October 14, 1907.

Respectfully submitted,

FRANK H. PLATT,
Of Counsel for Respondent.

POLK *v.* MUTUAL RESERVE FUND LIFE ASSOCIATION OF NEW YORK.

CERTIFICATE FROM THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

No. 45. Argued November 11, 1907.—Decided December 2, 1907.

Where there is a reserved power in the legislature to alter, amend or repeal charters, a law permitting mutual life associations to reincorporate as regular life insurance companies is not unconstitutional as impairing the obligation of the contracts existing between such associations and their policyholders, or as depriving such policyholders of their property without due process of law. *Wright* v. *Minnesota Mutual Life Insurance Co.*, 193 U. S. 657.

The legislative power to alter, amend and repeal charters is equally effectual whether it be reserved in the original act of incorporation, the articles of association under a general law, or in the constitution of the State in force when the incorporation under a general law is made.

Under the power to alter, amend and repeal charters reserved in the Constitution of 1846 of New York, Chapter 722 of the Laws of 1901 does not impair the obligation of contracts existing between mutual life associations and their policyholders, nor in this case did the reincorporation of such an association as a regular life insurance company deprive its policyholders of their property without due process of law.

IN this case the Circuit Court of Appeals for the Second Circuit certified certain questions of law upon which it desired instruction. Such part of the statement accompanying the questions as we find material and the questions themselves follow:

"The above-named appellants filed their bill in equity in the United States Circuit Court for the Southern District of New York, praying for the appointment of a receiver of both defendants, the winding up of both defendants, an accounting to ascertain the interests of complainants and all other policyholders of Mutual Reserve Fund Life Association in the assets of Mutual Reserve Life Insurance Company and the marshaling

and distribution of said assets. A final decree was entered by the Circuit Court sustaining a demurrer of the defendant to the amended bill of complaint and dismissing the bill. From that decree the complainants have appealed to this court.

"The amended bill of complaint alleges the existence of the following facts:

"The complainants became members and policyholders of the said association respectively on various dates from 1886 to 1900. The policy of each complainant is made a part of the bill and also the application for insurance of two of the complainants. The material provisions of the policies and applications are hereto annexed as Exhibits 1 and 2. Said association became a corporation organized and existing under the laws of the State of New York. It was originally organized in 1881 under the corporate name of Mutual Reserve Fund Life Association of New York, under Chapter 267, Laws of 1875, entitled 'An Act for the incorporation of societies and clubs for certain lawful purposes.' The original certificate of incorporation stated the objects and business of the company to be 'The mutual benefit of ourselves and all others who may become members of the society by providing benefits for families and others dependent upon such members by means of voluntary contributions to meet exigencies occurring from time to time, and to provide a fund for the common and exclusive benefit of all members.' In 1883 the association reincorporated under Chapter 175, Laws of 1883, entitled 'An Act to provide for the incorporation and regulation of coöperative or assessment life and casualty insurance associations and societies.' Its amended charter or certificate of incorporation, filed in 1883, after reciting the desire of the corporation to reincorporate under said act of 1883, provided:

"'First. We do hereby express our intention to form an organization for the transaction of life insurance upon the cooperative or assessment plan.

* * * * * * * *

"'Fourth. The mode and manner in which the corporate

powers granted are to be exercised are by issuing certificate of membership, policy or other evidence of interest to, and promise an agreement with its members, whereby upon the decease of a member, money or other benefit, charity, relief, or aid is to be paid, provided or rendered by said corporation or association to the legal representative of such member, or to the beneficiary designated by such member, which money, benefit, charity, relief or aid are derived from voluntary donations, or from admission fees, dues and assessments, or some of them, collected or to be collected from the members thereof, or members of a class therein and interest and accretions thereon, or rebates from amounts payable to beneficiaries, or heirs, and wherein the paying, providing or rendering of such money or other benefit, charity, relief or aid is conditioned upon the same being realized in the manner aforesaid; and wherein the money or other benefit, charity, relief or aid so realized is applied to the uses and purposes of said corporation or association, and the expenses of the management and prosecution of its said business.'

"The existence and corporate powers of the association under the name of Mutual Reserve Fund Life Association of New York continued from that time unchanged until April 17th, 1902. On that date a declaration and amended charter of the said association was filed under and pursuant to the provisions of Chapter 722, Laws of 1901, which act was an amendment of Section 52 of Chapter 690, Laws of 1892, known as the Insurance Law of the State of New York. This amended charter of 1902 was adopted and filed pursuant to a resolution of the board of directors of the said association, adopted by more than a majority of said board. The declaration and amended charter were duly certified by the Attorney-General of the State to be in accordance with the requirements of law, and the State Superintendent of Insurance issued his certificate of the filing of such declaration and amended charter and consented to the transaction of the business of insurance by the said Mutual Reserve Fund Life Insurance Company as

in said amended charter provided. The material provisions of said declaration and amended charter are as follows:

"'This is to certify that the Mutual Reserve Fund Life Association, a corporation originally organized under and by virtue of Chapter 267 of the Laws of 1875, and reincorporated and transacting business under Chapter 175 of the Laws of 1883 of the State of New York, and the laws amendatory thereof and supplementary thereto, has duly accepted the provisions of the act of the legislature of the State of New York, being Chapter 690 of the Laws of 1892, known as "The Insurance Law," and the amendments thereto, and in conformity with the same has duly adopted the following amended charter:

"'Article I.

"'The name of the corporation shall be "Mutual Reserve Life Insurance Company."

* * * * * * * *

"'Article III.

"'The business of the company shall be insurance upon the lives or the health of persons, and all and every insurance appertaining thereto, the making of endowments, and the granting, purchasing and dispensing of annuities, such kind of insurance being authorized under subdivision one of section 70 of "The Insurance Law."

"'Article IV.

* * * * * * * *

"'SEC. 4. The present by-laws of the corporation, which form part of its contracts with its members, shall continue to be the by-laws of the company unless or until the same shall be revised or amended in the manner therein provided.

* * * * * * * *

"'Article VI.

"'SEC. 1. The company shall have no capital stock, but shall be a mutual company.

* * * * * * * *

"'Article VIII.

"'The company shall be entitled to have and enjoy all the

rights, privileges, and provisions of existing laws which might be included in the charter and enjoyed by it, if it were originally incorporated under "The Insurance Law" of this State.'

"The consent of the policyholders to this amendment of the defendant's charter was not obtained, and no meeting of policyholders was called for that purpose. The complainants had no notice of said amendment until June 2nd, 1902, on which date complainants received the following notice:

"'*Note Change of Name.*

"'Make checks and money orders payable to

"'Mutual Reserve Life Insurance Company.

"'On April 17, 1902, Mutual Reserve Fund Life Association reincorporated as a mutual level premium company, under the title of *Mutual Reserve Life Insurance Company.* Attention is called to this change of name and to the accompanying report of the recent examination of the corporation by the Superintendent of Insurance of the State of New York, which shows a surplus over liabilities of $466,885.48.

"'This reincorporation, while insuring the stability of the company, makes no change in your policy.

"'CHARLES W. CAMP, *Secretary.*'

"The bill suggests no irregularity or defect in the procedure by which the amendment of the charter in 1902 was effected, other than that the consent of the policyholders was not obtained.

"It is further alleged that said company was organized about the 17th of April, 1902, by the then officers and directors of the respondent Mutual Reserve Fund Life Association, without authority from and without the knowledge or consent of complainants or the other members and policyholders of said association and without corporate action by said members and policyholders, and that complainants and the other members of the association were not advised of the organization of the company until on or about June 2, 1902, when they received a printed slip notifying them that the said association

had reincorporated under the name 'Mutual Reserve Life Insurance Company.'

"The amended bill then alleges that at the time of the organization of said company the association was, and for a considerable time had been insolvent, its liabilities being in excess of the value of its assets by a large amount, and that the insolvency of the association was known to the officers and directors thereof, and that the officers and directors, headed by Frederick A. Burnham, president of the association, well knowing the insolvency of the association, devised the scheme for the incorporation of the respondent Mutual Reserve Life Insurance Company and procured legislation intended to authorize the same, with the object and for the purpose of secretly and fraudulently 'depriving complainants and the other members and policyholders of respondent association of their membership rights and privileges and of abridging the same, and that by their said course in the premises said officers and directors sought and intended to defraud the complainants and the members and policyholders of said association generally and sought and intended to deprive them of their rights as members and policyholders or to cause a forfeiture of the same.

"Complainants in their amended bill allege 'that said law, Chapter 722 of the Laws of New York of 1901, if its effect and meaning be such as to authorize the pretended reorganization and reincorporation of the respondent association by the officers and directors thereof without due notice to and without the knowledge and consent of complainants or any of the members and policyholders of respondent association . . . is in contravention and violation of section 10, Article I, of the Constitution of the United States, which prohibits any State from enacting a law 'impairing the obligation of contracts,' and complainants invoke and rely upon said provision of the Constitution of the United States and say that under said provision of the Constitution of the United States said law is unconstitutional, invalid and void.' And 'complainants fur-

ther allege that said law of the State of New York, if given the construction, meaning and effect aforesaid, is in contravention and violation of those provisions of the Constitution of the United States and of the State of New York, which provide that "no person shall be deprived of his property without due process of law," in this, that they deprive the complainants and the other members and policyholders of respondent association of their vested rights and privileges and of their property rights under their contracts and agreements with respondent association without due process of law, and complainants, as citizens and residents of the State of Tennessee and non-residents of the State of New York, invoke the provisions of Article XIV of the Amendments to the Constitution of the United States, and, upon advice of counsel, allege and charge that said law of the State of New York, if given the force, meaning and effect aforesaid, is in violation of those clauses of the Fourteenth Amendment to the Constitution of the United States, which provide that "no State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." ' "

The Circuit Court of Appeals desires instruction upon the following:

Questions.

"1. Does the amended bill of complaint disclose that any contract obligations between complainants and the defendant Mutual Reserve Fund Life Association were impaired by the incorporation of the Mutual Reserve Life Insurance Company in 1902, pursuant to the provisions of Chapter 722, Laws 1901, of the State of New York, and the transfer to said company of the assets, properties and membership of the Mutual Reserve Fund Life Association?

"2. Does the amended bill of complaint disclose and show that Chapter 722, Laws of 1901, of the State of New York, was

in violation of Article I, section 10, of the Constitution of the United States, as impairing the obligations of a contract between the defendant Mutual Reserve Fund Life Association and complainants, in so far as it authorized the reincorporation of said association as the Mutual Reserve Life Insurance Company?

"3. Does the amended bill of complaint disclose that Chapter 722, Laws of 1901, of the State of New York, is in violation of the provisions of Article XIV of the Amendments to the Constitution of the United States, in this, that the reincorporation of the Mutual Reserve Fund Life Association as the Mutual Reserve Life Insurance Company, and the changes in the charter powers and franchises of the corporation have the effect of depriving complainants of their property without due process of law, and of their vested contract rights and privileges and of their property rights under their contracts and agreements with respondent association?

"4. Does the amended bill of complaint disclose that Chapter 722, Laws of 1901, of the State of New York, was in violation of those provisions of Article XIV of the Amendments to the Constitution of the United States, which provide that no State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws?"

Mr. William Hepburn Russell, with whom *Mr. D. L. Snodgrass*, *Mr. R. F. Jackson*, *Mr. William Beverly Winslow*, *Mr. Caruthers Ewing* and *Mr. Daniel M. Miers* were on the brief, for Polk *et al.*:

The organization of the insurance company by action of the directors and officers of the Mutual Reserve Fund Association, acting without the knowledge or consent of the members and policyholders of the latter, when it was insolvent, and under a law the passage of which they procured in fraud of such mem-

bers and policyholders, had the effect of depriving the complainants and other members and policyholders of their property without due process of law, of impairing the obligation of their contracts of membership and of denying to them the equal protection of the laws. *Huber* v. *Martin*, 127 Wisconsin, 412; *S. C.*, 115 Am. St. Rep. 1023; *Zabriskie* v. *Hackensack &c. R. Co.*, 18 N. J. Eq. 174; *Railway Co.* v. *Allerton*, 18 Wall. 233; *Baker's Appeal*, 109 Pa. St. 461; *Hartford & New Haven R. Co.* v. *Croswell*, 5 Hill (N. Y.), 383, 386; *Schwarzwaelder* v. *German Mut. Fire Ins. Co.*, 59 N. J. Eq. 589; *People* v. *Ballard*, 134 N. Y. 269, 294; 1 Morawetz on Corp. (2d ed.), §§ 295, 395, 404, 512.

Wright v. *Minnesota Mutual Life Insurance Co.*, 193 U. S. 657, is a controlling authority against the right of the directors of the Mutual Reserve Fund Life Association to (*a*), procure legislation authorizing a mutual life insurance society, organized upon the assessment plan, to change to a level premium, old line company upon the application of the directors alone; and (*b*), to make the change under such law, without the knowledge or consent of the members, at a time when the association was already insolvent.

Directors of a mutual membership corporation have no power without the authority and consent of the members, to alter, amend and change the corporate charter either by their own acts, or pursuant to legislation, procured upon their initiative, for such purpose. *Marlborough Mfg. Co.* v. *Smith*, 2 Connecticut, 579, 583, 584; 1 Morawetz on Corp. (2d ed.), §§ 295, 297, 395, 397, 512–514; *Railway Co.* v. *Allerton*, 18 Wall. 233; *Baker's Appeal*, 109 Pa. St. 461; *So. Pennsylvania Iron & R. Co.* v. *Stevens*, 87 Pa. St. 190, 196; *Edwards* v. *Mercantile Trust Co.*, 124 Fed. Rep. 382, 392. Nor does the reserved power of the legislature to "amend, alter or repeal" authorize those directors to procure general legislation under which they can apply for and obtain such a reincorporation of the company without the knowledge and consent of its members. Taylor on Corporations (5th ed.), §§ 499, 500; *Railway Co.* v. *Allerton*,

18 Wall. 233, 235, 236; *Baker's Appeal*, 109 Pa. St. 461, 471, 472; *Zabriskie* v. *Hackensack &c. R. Co.*, 18 N. J. Eq. 178; *Botts* v. *Simpsonville &c. Co.*, 88 Kentucky, 54; *Huber* v. *Martin*, 115 Am. St. Rep. 1023; *Black* v. *Delaware &c. Canal Co.*, 24 N. J. Eq. 455, 466; *Mills* v. *Central R. Co.*, 41 N. J. Eq. 1.

Chapter 722, Laws of New York of 1901, is unconstitutional and void and the pretended reincorporation of the Mutual Reserve Fund Life Association under its provisions is invalid, because it impairs the obligation of contracts between a mutual coöperative assessment life insurance society and its members by conferring power upon the directors of the corporation, without the action, knowledge or consent of the members, to change the corporation into an insurance company of a different class, with different burdens resting upon it and through it upon its members. 3 Thompson on Corp., §§ 3979, 3980; *Railway Co.* v. *Allerton*, 18 Wall. 233; *Baker's Appeal*, 109 Pa. St. 461; *Marlborough Mfg. Co.* v. *Smith*, 2 Connecticut, 579, 583, 584; *Venner* v. *Atchison, Topeka & Santa Fe R. Co.*, 28 Fed. Rep. 581, per Brewer, C. J.; *Mayor &c.* v. *Knoxville & O. R. Co.*, 22 Fed. Rep. 758, per Baxter, C. J.

The change made in the nature and business of the Mutual Reserve Fund Life Association by its pretended reincorporation as the Mutual Reserve Life Insurance Company, whereby it was transformed from an assessment company to an old line, level premium company, its policies "valued" and a "legal reserve" created, was fundamental, and no power of amendment by the directors being reserved in its charter, the pretended reincorporation under Chap. 722 by the action of the directors alone, is unconstitutional and invalid and has the effect of impairing the obligation of contracts with its members and depriving them of their property without due process of law. *Bedford* v. *Eastern B. & L. Ass'n*, 181 U. S. 227, 240-241; Chap. 175, Laws of N. Y. of 1883, § 16; Chap. 690, Laws of N. Y. of 1892, § 209; Chap. 690, Laws of N. Y. of 1893, §§ 1 and 2; *Lord* v. *Equitable Assurance Soc.*, 109 App. Div. N. Y. 252.

Mr. Frank H. Platt, with whom *Mr. Sewell T. Tyng* was on the brief, for the insurance company:

The record negatives the fact, apparently assumed in the first question certified, that the Mutual Reserve Life Insurance Company is a separate and distinct corporation to which the assets of the Mutual Reserve Fund Life Association have been transferred.

The amendment of the charter in April, 1902, was duly and regularly effected pursuant to Chap. 722, Laws of 1901. The consent of policyholders or members to the amendment was not required by that statute.

The record does not disclose that any contract obligations or property rights of the appellants have been impaired or affected by the amendment of the corporation's charter. No change was made or attempted in the outstanding contracts or policies.

Chapter 722 of the Laws of 1901 of the State of New York, under which the defendant amended its charter, does not violate the contract or due process provisions of the Federal Constitution. Appellants as policyholders of an assessment insurance company have no vested or contract right to insist that the business of the company shall always be conducted exclusively upon the assessment plan. *Wright* v. *Minnesota Mutual Life Insurance Company,* 193 U. S. 657, affirming *Iverson* v. *Minn. Mutual Life Ins. Co.,* 137 Fed. Rep. 268. See also *Miller* v. *State of New York,* 15 Wall. 478; *C. H. Jenner Co.* v. *U. S. Steel Corporation,* 116 Fed. Rep. 1012; *McKee* v. *Chautauqua Assembly,* 130 Fed. Rep. 536; *Grobe* v. *Ins. Co.,* 169 N. Y. 613.

Mr. Justice Moody, after making the foregoing statement, delivered the opinion of the court.

The Mutual Reserve Fund Association of New York (hereinafter called the Association) was originally incorporated under Chap. 267 of the Laws of New York of 1875. The certificate

of incorporation stated the purposes of the Association to be to provide "benefits for families and others dependent . . . by means of voluntary contributions . . . and to provide a fund for the common and exclusive benefit of all members." In 1883 the Association reincorporated under Chap. 175, Laws of 1883, and while this charter was in existence the complainants became members and policyholders. That law provided for the incorporation and regulation of coöperative and assessment life and casualty insurance associations, and the charter of the Association stated the business to be conducted as "the transaction of life insurance upon the coöperative or assessment plan." The law, as will presently be shown, was subject to alteration or repeal. In 1892 an act known as the Insurance Law (Chap. 38 of the General Laws, Laws 1892 p. 1930) was passed, repealing previous laws upon the subject of insurance, and expressed to be "applicable to all corporations authorized by law to make insurances." Section 52 of this act, as amended by Chap. 722 of the Laws of 1901, is as follows:

"SEC. 52. Reorganizations of existing corporations and amendment of certificates.—Any domestic corporation existing or doing business at the time this chapter takes effect, may, by a vote of a majority of its directors or trustees, accept provisions of this chapter and amend its charter to conform with the same, upon obtaining the consent of the Superintendent of Insurance thereto in writing; and thereafter it shall be deemed to have been incorporated under this chapter, and every such corporation in reincorporating under this provision may for that purpose so adopt in whole or in part a new charter, in conformity herewith, and include therein any or all provisions of its existing charter, and any or all changes from its existing charter, to cover and enjoy any or all the privileges and provisions of existing laws which might be so included and enjoyed if it were originally incorporated thereunder, and it shall, upon such adoption of and after obtaining the consent, as in this section before provided, to such charter, and filing the same and the record of adoption and consent in the office of the Super-

intendent of Insurance, perpetually enjoy the same as and be such corporation, and which is declared to be a continuation of such corporation which existed prior to such reincorporation; and the offices therein, which shall be continued shall be filled by the respective incumbents for the periods for which they were elected, and all others shall be filled in the same manner as by such amended charter provided. Every domestic insurance corporation may amend its charter or certificate of incorporation by inserting therein any statement or matter which might have been originally inserted therein; and the same proceedings shall be taken upon the presentation of such amended charter or certificate to the Superintendent of Insurance, as are required by this chapter to be taken with respect to an original charter or certificate, and if approved by the Superintendent of Insurance, and his certificate of authority to do business thereunder is granted, the corporation shall thereafter be deemed to possess the same powers and be subject to the same liabilities as if such amended charter or certificate had been its original charter or certificate of incorporation, but without prejudice to any pending action or proceeding or any rights previously accrued. This section shall apply to insurance corporations organized under or subject to article six of the insurance law as well as to insurance corporations organized under special charters or articles two and ten of the insurance law; all contracts, policies and certificates issued by such corporations prior to accepting the provisions of this chapter shall be valued as one year term insurance at the ages attained, excepting when such contracts, policies or certificates shall provide for a limited number of specified premiums or for specified surrender values, in which case they shall be valued as provided in article two, section eighty-four, of the insurance law."

Following strictly the provisions of this section, the Association accepted the provisions of the insurance law, amended its charter, and became entitled to all the privileges of the law as if it had been originally incorporated thereunder. In the amendments to the charter the name of the Association was

changed to "Mutual Reserve Life Insurance Company" (hereinafter called the Company), and the business of the Company was stated to be "insurance upon the lives or the health of persons, and all and every insurance appertaining thereto, the making of endowments, and the granting, purchasing and dispensing of annuities." The effect of this was to broaden the business from that of merely coöperative and assessment life insurance to life insurance of every kind. It is conceded that what was done was within the authority conferred by the statute, and the subject for our consideration is whether any of the rights, secured to the complainants by the Constitution of the United States, have been impaired.

The first question certified is, whether the incorporation of the Company and the transfer to it of the assets, property and membership of the Association impaired any contract obligations between the Association and the complainants. This question possibly implies that by the reincorporation an entirely new corporation was created, to which the property of the old corporation was transferred. But the question must be interpreted with the aid of the statement of facts which accompanies it. An examination of the facts and of the statute shows that there was simply a reorganization of an existing corporation and not the creation of a new one. The title of the section is, "Reorganizations of existing corporations and amendment of certificates." It authorizes an existing corporation by vote of its directors to accept the provisions of the chapter and amend its charter. It provides expressly that the corporation, with its added powers and revised charter, shall be a "continuation of such corporation which existed prior to such reincorporation." This, perhaps, makes superfluous the saving of "pending actions or proceeding or any rights previously accrued" which the section cautiously insures. The declaration filed by the directors, and certified by the Attorney General to be in conformity with law, recites that the Association "has duly accepted the provisions" of the insurance law, and "duly adopted the following amended charter." The corporation

was not changed to a stock, but continued as a mutual company. The change of name cannot control the significance of these facts. We answer this and the other questions upon the assumption, therefore, that the old corporation was still in existence, under a new name, and with added powers, but with unchanged membership, and bound to perform all its existing obligations. Upon this view it is impossible to say that any of the contract obligations of the Association to the complainants have been impaired by the reorganization. This was the view apparently accepted by the Company, who, in its notice to its members, said: "This reincorporation, while insuring the stability of the Company, makes no change in your policy." It is contended, however, that the last clause of the section, which is applicable to associations for insurance under the coöperative or assessment plan, affects the contracts of the old members, by converting them into one-year term insurances at the ages attained. But as we understand this clause it has no effect upon the contracts of insurance, but is designed for a totally different purpose. It simply prescribes a standard by which the liabilities on the assessment contracts must be appraised. The Superintendent of Insurance is charged with the duty of deciding whether the assets of insurance companies bear such a relation to their liabilities that it is safe to allow them to continue in business. A very large part of the liabilities of any insurance company is upon outstanding contracts of insurance, not due and therefore not capable of exact measurement. Such liabilities can only be estimated or "valued." Section 84 of the insurance law provides for the method of estimating or valuing the liability on ordinary life policies, but that method seems inapplicable to assessment policies. In any event, the legislature determined that, when an assessment company was allowed to engage in other kinds of life insurance, its outstanding policies should be appraised as liabilities as if they were "one-year term insurance at the ages attained." This does not make them such in fact, or authorize the Company, in its dealings with the policyholder, to

treat them as such. The statutory appraisement of the policies for bookkeeping purposes no more affects the rights of the members under their contracts than the account of stock of a merchant would affect the rights of his creditors. The first question must be answered in the negative.

The second question certified is, whether the law of 1901, so far as it authorized the reincorporation of the Association, was in violation of the clause of the Constitution forbidding a State from passing a law impairing the obligation of contracts. A similar question was before the court in *Wright* v. *Minnesota Mutual Life Ins. Co.*, 193 U. S. 657, where it was held that a law of Minnesota, authorizing an assessment insurance company to change its business to that of insurance upon a regular premium basis, was not in violation of this provision of the Constitution. The reasoning of the court in that case need not be repeated. It is conclusive upon this question, unless the case at bar can be distinguished from it. The complainants seek to distinguish the case in several respects, which must be noticed. First, it is said that in the *Wright case* the power of amendment of the articles of association was reserved in the articles of association, while no such reservation exists here. But the constitution of New York, in force since 1846, contains this provision: "Corporations may be formed under general laws; but shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the legislature, the objects of the corporation cannot be attained under general laws. *All general laws and special acts passed pursuant to this section may be altered from time to time or repealed.*" A constitutional provision of the State of Michigan in substantially the same words was held to authorize important changes in the articles of association of an insurance company incorporated under a general law. *Looker* v. *Maynard*, 179 U. S. 46. There it was said, page 52: "The effect of such a provision, whether contained in an original act of incorporation, or in a constitution or general law subject to which a charter is accepted is, at the least, to reserve to the legislature the power

to make any alteration or amendment of a charter subject to it, which will not defeat or substantially impair the object of the grant, or any right vested under the grant, and which the legislature may deem necessary to carry into effect the purpose of the grant, or to protect the rights of the public or of the corporation, its stockholders or creditors, or to promote the due administration of its affairs." This case shows that it is immaterial whether the power to alter the charter is reserved in the original act of incorporation, or in the articles of association under a general law, or in a constitution in force when the incorporation under a general law is made, as in the case at bar. Second, it is said that in the *Wright case* the change was made by the majority of the members of the association, while in the case at bar it was made by a majority of the directors without the consent of the members. But in each case the change was made in conformity with the provisions of the law authorizing it, and if the legislature has the constitutional power to authorize the change by the vote of a majority of the members it has the power to authorize the change by a vote of a majority of the directors. The rights of a protesting member are no more impaired in one case than in the other. Next, it is said that distinctions may be based upon the allegations in this case that the Association was insolvent, and that knowing this, its officers devised the scheme of reincorporation and procured legislation authorizing it, with the intent to defraud the members. That the corporation was solvent was emphasized by the court in the *Wright case*, but nothing in the decision of the constitutional question turned upon that. It would introduce a new uncertainty into the law if the constitutionality of statutes were to be judged by the motives and purposes of those who persuaded the legislature to enact them. We are unable to conceive of any possible bearing that these allegations, if accepted as true, could have on the constitutional questions certified to us, or to regard them as creating any real and substantial distinction between the case before us and the *Wright case*. On the authority of that case,

therefore, the second question must be answered in the negative.

The other two questions certified inquire whether the law under which the reincorporation was made, or the reincorporation and changes in power made under its provisions, are in violation of the Fourteenth Amendment to the Constitution of the United States. These questions do not require separate or detailed consideration. As applied to the facts of this case, they are practically dealt with in the discussion which has preceded. It is not suggested that any rights secured to the complainants by the Fourteenth Amendment were violated in any other manner than by the reincorporation of the Association without the consent of its members, the change in and addition to its powers, and the consequent effect upon the contract rights of the complainants and upon their relation to the corporation. But it has been shown that the contract rights of the complainant have not been affected by the reincorporation, and the same reasoning that leads to the conclusion that the changes in the charter powers, made under the reserved powers of the State, do not violate the contract clause of the Constitution are apt to show that they do not violate the Fourteenth Amendment. In fact, the only suggestion of a violation of the Fourteenth Amendment made to us is that the reincorporation, under the circumstances of this case, deprived the complainants of their vested rights and privileges and property rights under their contracts, without due process of law. Since the incorporation has deprived the complainants of no vested rights, privileges or property, the contention fails.

The whole argument of the complainants upon these constitutional questions, though enveloped in many words and presented in divers forms, rests upon a single proposition. That proposition is that they, having become members of an association insuring lives upon the coöperative and assessment plan, and being therefore, in a sense, both insurers and insured, have a vested right that the Association shall not, without their consent, engage in other kinds of insurance, which may and

probably will indirectly affect, for better or worse, their relations to it. The trouble with this proposition is that it was made and denied in the *Wright case*.

We have confined our consideration strictly to the constitutional questions certified. It may be that the complainants' rights under their contracts have not been observed by the Company or that they have otherwise been unlawfully injured. These questions are not before us.

The questions are severally answered in the negative.